TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~279.~~ 84

THE STEAMER "CAYUGA," ETC., THE HUDSON RIVER STEAMBOAT COMPANY, CLAIMANT, APPELLANT,

vs.

THE HOBOKEN LAND AND IMPROVEMENT COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED NOVEMBER 3, 1870.

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1 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Charles W. Newton, clerk of the circuit court of the United States of America for the eastern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file, and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this 21st day of October, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the said United States the ninety-fifth.

[SEAL.] CHA'S W. NEWTON, *Clerk.*

2 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Samuel T. Jones, clerk of the district court of the United States of America for the eastern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file, and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this 30th day of March, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the said United States the ninety-second.

[L. S.] SAMUEL T. JONES, *Clerk.*

3 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on , the 1st day of December, in the year of our Lord one thousand eight hundred and sixty-six:

Present, the Honorable Charles L. Benedict, district judge.

THE HOBOKEN LAND AND IMPROVEMENT Company
vs.
THE STEAM-TUG CAYUGA, HER ENGINES, boiler, &c.

The libellants file their libel against the above-named steam-tug, her engines, boiler, &c., in the words and figures following, to wit:

4 To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The libel of the Hoboken Land and Improvement Company, a corporation, duly created by the laws of the State of New Jersey, against The Steam-tug Cayuga, her steam-engine, boilers, machinery, tackle, apparel, and other furniture, and all persons lawfully intervening for their interest in the same, in a cause of collision, civil and maritime, alleges as follows:

First. That your libellant before and at the time of the collision hereinafter mentioned was, and still is, the owner and proprietor of a certain steam ferry-boat, called the "James Watt," with her steam-engine, boilers, machinery, tackle, apparel, and other furniture, which said steam ferry-boat your libellant employed in transporting passengers and

freight between the port of New York and the city of Hoboken, in the State of New Jersey, and between which said places she was regularly run daily, and every day, for the purposes aforesaid.

5 Second. That, on Wednesday, the 13th day of June, in the year 1866, the said steamboat, James Watt, with her steam-engine, boilers, machinery, tackle, apparel, and other furniture on board thereof, was running from the said city of Hoboken to the said port of New York, in her usual track in the Hudson River, between the two said places, where she had a perfect right to be, the said steamboat James Watt being then, and also at the time hereinafter mentioned, tight, *taunch*, strong, and in every respect well manned, tackled, apparelled, and appointed, and having on board a regularly-licensed pilot, and the usual and necessary compliment of officers and men, and the said pilot, master, and crew, engaged on board, were on the look-out for the protection and safety of said steamboat.

Third. That on the afternoon of that day, and while the said steamboat, James Watt, was running as aforesaid, then steering a south-by-east course, and being about opposite Chambers street, in the city of New York, the said steamboat Cayuga, the master whereof is unknown to your libellant, having a few minutes before that time come out

6 of a slip on the upper side of Desbrosses-street ferry, in the said port of New York, and then heading about a south-southwest course toward Jersey City, and then being about one-third way across the river towards the Jersey shore, with an ebb-tide, then and there with great force and violence ran into and upon the said steamboat James Watt, and did thereby cause great damage and injury to the said steamer James Watt, her guards, hull, and stern, and remained foul of. and upon the said James Watt, and for some time, when she cleared and passed on.

Fourth. That the said steamboat Cayuga, before and at the time of the said collision, having taken a sweep round into the stream, was going down the said Hudson River, as this libellant is informed and believes, without a licensed pilot; that she was steaming along rapidly with the aid of the tide; that from the improper and unskillful management of the persons navigating said steamer Cayuga, which said steamer Cayuga then had the said steamer James Watt on her own starboard side, and it being then the duty of the said steamer Cayuga, in her then position, to keep out of the way of the said steamer James Watt,

7 the said steamer then crossing so as to involve risk of collision, and being in a situation requiring great caution, the said steamer Cayuga was so improperly and unskillfully managed and navigated, in the particulars in this libel mentioned, that she was driven upon and into the said steamboat James Watt as aforesaid.

Fifth. That the persons navigating said steamer Cayuga when said steamer was nearly opposite Chambers street, about one-third of the way over to the Jersey shore as hereinbefore stated, stopped the engine for about half a minute, the two steamers being then about four hundred yards apart, and then heading as hereinbefore stated, to wit, the said steamer Cayuga about south-southwest, and the said steamer James Watt south-by-east; that thereupon the pilot of the said steamer James Watt continued on his course, there being no danger of any collision by so doing; that the persons in charge of said steamer Cayuga after keeping her engine stopped for about half a minute, again set her engine in motion to propel said steamer ahead, and thereupon the pilot of said steamer James Watt immediately gave one short and distinct blast of the steam-whistle of said steamer James Watt to warn the persons in

charge of the said steamer Cayuga to keep out of the way, and to
8 notify them that the said steamer James Watt would pass to the right, and that the said steamer Cayuga must pass under the stern of said steamer James Watt, which she could then easily and readily do without any danger of collision; that the said steamer Cayuga did not answer said signal, but kept right along in her course, the two steamers being then between three and four hundred yards apart. The said steamer James Watt continued on her course, it being impossible for her then to stop without rendering a collision inevitable; that, at this time, the said steamer Cayuga had the said steamer James Watt on her own starboard side, and could have avoided the collision by altering her course one point to the right.

Sixth. That in consequence of the said hereinbefore mentioned acts of the persons in charge of the said steamer Cayuga, she ran into and foul of the said steamer James Watt, her bow striking with great force and violence on the port side of the said steamer James Watt, about twenty-five feet from her stern, and by the force of said collision broke through the wearing piece, the plank sheer, the facing and lining, breaking in on that side about three feet, and stripping off all
8 the work outside of the deck plank and tearing off the ends of the deck plank to the chain post on the starboard side, carrying away the railing stancheons, anchor, and all aft the deck plank, and otherwise damaging her stern; that the collision aforesaid was occasioned by the negligence, inattention, and want of proper care and skill on the part of the said steamer Cayuga and the persons in charge of her, and not from any fault, omission, or neglect on the part of said steamer James Watt and the persons in charge of her.

Seventh. That the said steamer James Watt was so injured and disabled by the force and violence with which she was struck by the said steamer Cayuga, as to render it necessary to cease using her for the purpose hereinbefore mentioned, and this libellant was obliged to withdraw her from said employment in order to repair her and fit her again for use; that from the 13th day of June, 1866, to the 27th day of June, 1866, both days inclusive, said steamer was being repaired, and the owner of said steamer James Watt was necessarily deprived of her use during this period, and at the time when her services were par-
10 ticularly valuable, and said owner was obliged to place another steamer in the place of said steamer James Watt, to preform the service in which she had theretofore been engaged; that the use of said steamer James Watt, was at that time, worth one hundred and fifty dollars a day to the libellant, and she could earn that amount for this libellant on hire; that the libellant in consequence of being run into and foul of as aforesaid, has sustained damage in being deprived of the use of said steamer James Watt for fifteen days, and for repairs to the said steamer James Watt, and to her fixtures, made necessary by said collision, and for her loss of time and otherwise, to the amount of four thousand dollars, which said damages were occasioned by the negligence, want of skill, and improper conduct of the persons navigating the said steamer Cayuga, and not by or through any fault, negligence, or improper conduct on the part of the persons navigating the said steamer James Watt, her master, or crew.

Eighth. That since the said steamer James Watt was so run into
11 and foul of as aforesad, this libellant has applied to the owners of the said steamer Cayuga, and requested them to settle with this libellant for the damages sustained by this libellant as above mentioned; but the said owners deny that there is any liability on the part

of said steamer Cayuga or her owners for the said damages, or any part thereof.

Ninth. That the said steamer Cayuga is now lying in the port of New York, and within the jurisdiction of this court.

Tenth. That all singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this honorable court.

Wherefore the libellant prays that process, in due form of law, according to the course of this honorable court in cases of admiralty & maritime jurisdiction, may issue against the said steamer Cayuga, her steam-engine, boilers, machiney, tackle, apparel, and other furniture, and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid; and that this honorable court would be pleased to decree the payment of the
12 damages as aforesaid, and that the said steamer Cayuga may be condemned and sold to pay the same, and that this libellent may have such other and further relief as in law and justice it may be entitled to receive.

Hoboken Land and Improvement Company,

By LEON ABBETT,
Agent and Attorney.

ABBETT & FULLER,
Proctors & Advocates for Libellant.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

On this first day of December, 1866, before me, the subscriber, a notary public of the State of New York, in the eastern district of New York, came Leon Abbett, attorney of the above-named libellant, who being by me duly sworn, did depose and say that he had heard read the foregoing libel by him subscribed, and that he knew the contents thereof to be true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes it to be true.

LEON ABBETT.

Sworn to before me this 1st day of December, 1866.

F. W. FULLER,
Notary Public.

13 (Indorsed:) District court of the United States for the eastern district of N. Y., in admiralty, The Hoboken Land and Improvement Company, libellant, vs. The Steamer "Cayuga," respondent. Libel. Abbett & Fuller, proctors for libellant. Filed December 1st, 1866.

14 *Stipulation for libellant's costs, entered into pursuant to the rules and practice of this court.—Filed the 1st day of December*, 1866.

District court of the United States for the eastern district of New York.

Whereas a libel was filed in this court, on the 1st day of December, in the year of our Lord one thousand eight hundred and sixty-six, by Hoboken Land and Improvement Company, against The Steam-tug Cayuga, her steam-engine, boilers, machinery, tackle, apparel, &c., for the reasons and causes in the said libel mentioned, and praying that said steam-tug may be condemned and sold and the said libellants and Leon

Abbett, surety, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named, shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this court or, in case of appeal, by the appellate court.

Hoboken Land & Improvement Company.

LEON ABBETT.

Taken and acknowledged this 1st day of December, 1866, before me.

SAMUEL T. JONES,
U. S. Commissioner.

EASTERN DISTRICT OF NEW YORK, *ss:*

Leon Abbett, one of the parties to the above stipulation, being duly sworn, doth depose and say that he resides in the city of New York, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

LEON ABBETT.

Sworn to this 1st day of December, 1866, before me.

SAMUEL T. JONES.
U. S. Commissioner.

Recorded the 1st day of December, 1866.

S. T. JONES, *Clerk.*

15 U. S. district court, E. D., of New York.

THE HOBOKEN LAND AND IMPROVEMENT Company
vs.
THE STEAMER "CAYUGA," HER ENGINE, tackle, apparel, and furniture.

Process against the steamer Cayuga is hereby waived upon the undertaking of the claimant to give sufficient stipulation for value and for costs, according to the practice of the court, and to appear and answer on or before the 19th day of December, 1866. Value fixed at $4,500.

December 1st, 1866.

ABBETT & FULLER,
Proctors for Libellant.

(Indorsed:) U. S. district court, eastern district of N. Y. The Hoboken Land and Improvement Company vs. the steamer "Cayuga," &c. Consent to waive process. Filed Dec. 1st, 1866.

16 EASTERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the eastern district of New York, greeting:

L. S.] Whereas a libel hath been filed in the district court of the United States for the eastern district of New York, on the 1 day

of December, in the year of our Lord one thousand eight hundred and sixty-six, by the Hoboken Land and Improvement Company vs. the steamer "Cayuga," her tackle, &c., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamer or vessel, her tackle, &c., may be cited in general and special, to answer the premises, and all proceedings being had that the said steamer or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are, therefore, hereby commanded to attach the said steamer or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the eastern district of New York, on the 19th day of December, 1866, noon, of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Charles L. Benedict, judge of the said court, at the city of Brooklyn, in the eastern district of New York, this 1st day of December, in the year of *of* our Lord, one thousand eight hundred and sixty-six, and of our independence the ninety-first.

SAMUEL T. JONES, *Clerk.*

ABBETT & FULLER,
Proctors for Libellants.

(Indorsed:) Vol. ——, page ——. Eastern district of New York, United States district court. The Hoboken Land and Improvement Company vs. The Steamer "Cayuga," her tackle, &c. Monition ret'ble, Dec. 19th, 1866. Abbett & Fuller, proctors for libellants.

17 At a term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 7th day of December, in the year of our Lord one thousand eight hundred and sixty-six.

Present, the Honorable Charles L. Benedict, district judge.

THE STEAMER "CAYUGA," HER ENGINE, tackle, apparel, & furniture,
vs.
THE HOBOKEN LAND & IMPROVEMENT Company.
} Vol. ——, page ——.

And now Henry Smith intervening, as agent, for the interest of the owners in said steamer "Cayuga," the Hudson River Steamboat Company being owners of the said steamer, appears before the honorable court and makes claim to the said steamer, &c., as the same are attached by the marshal, under process of this court, at the instance of the Hoboken Land & Improvement Company; and the said Henry Smith avers that said steamer was in possession of the said owners at the time of the attachment thereof, and that the corporation above named are the true and bona fide owners of the said steamer, and that no other person or corporation is the owner thereof; and the said corporation is the true

and lawful bailee thereof, as owners, wherefore they pray to defend accordingly.

HENRY SMITH,
Ag't Hudson River Steamb't Co.

C. VAN SANTVOORD, *Proctor for Claimant.*

18 EASTERN DISTRICT OF NEW YORK, *ss:*

Henry Smith, being duly sworn, deposes and says that he resides in the city of New York; that he is the agent of the Hudson River Steamboat Company above named, and that the owners of said steamers reside in the cities of New York and Albany, and that this deponent is duly authorized to put in this claim in behalf of the owner of the said steamer Cayuga, and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

HENRY SMITH.

Sworn to and subscribed this 7th day of December, A. D. 1866, before me.

CHA'S W. NEWTON.
U. S. Commissioner.

(Indorsed:) Vol. ———, No. ———. United States district court for the eastern district of New York. The Steamer Cayuga, &c., ad's The Hoboken Land & Improvement Company. C. Van Santvoord, proctor for claimant. Claim of ———. Filed the seventh day of December, 1866.

19 *Stipulation entered into pursuant to the rules and practice of this court.—Filed the 7th day of December*, 1866.

District court of the United States for the eastern district of New York.

Whereas a libel was filed in this court on the first day of December, in the year of our Lord one thousand eight hundred and sixty-six, by The Hoboken Land & Improvement Company against The Steamer Cayuga, her engine, tackle, apparel, & furniture, for the reasons and causes in the said libel mentioned, and praying that said steamer may be condemned & sold, and the parties hereto hereby consenting that in case of default or contumacy on the part of the claimants, or their sureties, execution for the sum of two hundred & fifty dollars may issue against their goods, chattels, and lands;

And whereas, also, a claim has been filed in said cause by the Hudson River Steamboat Company, by Henry Smith, their agent:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred & fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court or, upon an appeal, by the appellate court.

HENRY SMITH,
Agent Hudson River Steamb't Co.
HENRY SMITH.
JESSE HOYT.

Taken and acknowledged this 7th day of December, 1866, before me.

CHA'S W. NEWTON,
U. S. Commissioner.

EASTERN DISTRICT OF NEW YORK, *ss:*

Jesse Hoyt, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of New York; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JESSE HOYT.

Sworn to this 7th day of December, 1866, before me.
CHA'S W. NEWTON,
U. S. Commissioner.

Recorded this 7th day of December, 1866.
S. T. JONES, *Clerk.*

20 *Stipulation for value, entered into pursuant to the rules and practice of this court.—Filed the 7th day of December*, 1866.

District court of the United States for the eastern district of New York, in admiralty.

Whereas a libel was filed on the first day of December, in the year of our Lord one thousand eight hundred and sixty six, by The Hoboken Land and Improvement Company against The Steamer Cayuga, her engine, tackle, apparel, & furniture, for the reasons and causes in the said libel mentioned; and whereas the said steamer is in the custody of the marshal under the process issued in pursuance of the prayer of said libel; and whereas a claim to said vessel has been filed by the Hudson River Steamboat Company, and the value of said steamer being fixed by consent at $4,500 *dollars*, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimants, or their sureties, execution for the above-agreed *agreed* value, with interest thereon, from this date, *value with interest thereon from this date*, may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such that if the stipulator, undersigned, shall at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Charles Van Santvoord, esquire, proctor for the claimant of said steamer, abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

HENRY SMITH,
Ag't Hudson River Steamboat Company.
JESSE HOYT.
HENRY SMITH.

Taken and acknowledged this 7th day of December, 1866, before me.
CHA'S W. NEWTON,
U. S. Commissioner.

21 EASTERN DISTRICT OF NEW YORK, *ss:*

Jesse Hoyt & Henry Smith, parties to the above stipulation, being duly sworn, depose and says that he resides in the city of New

York; that he is worth the sum of nine thousand dollars over and above all his just debts and liabilities.

JESSE HOYT.
HENRY SMITH.

Sworn to this 7th day of December, 1866, before me.
CHA'S W. NEWTON,
U. S. Commissioner.

Recorded this —— day of ——, 187–.

The form and sufficiencies of the within bond is approved, and the value of the within-named steamer is fixed by consent at $4,500, & we consent that, on filing the same with claim & stipulation for costs, the usual order for discharges be entered.
Dec. 7th, 1866.

ABBETT & FULLER,
Proctors for Libellants.

22 United States district court.

THE HOBOKEN LAND & IMPROVEMENT COMPANY *vs.* THE STEAMER "CAYUGA." } Notice to the marshal.

SIR: The above-named steamer having been bonded, and the costs of the clerk having been paid, you will discharge the said steamer from your custody.
Dated December 6th, 1866.
Yours, &c.,

SAMUEL T. JONES, *Clerk.*

To F. L. DALLON,
United States Marshal.

23

24 To the Honorable Charles L. Benedict, judge of the district court of the United States for eastern district of New York:

The answer of the Hudson River Steamboat Company, (a corporation incorporated by and under the laws of the State of New Jersey,) claimants, and owner of the steam-tug Cayuga, to the libel & complaint of The Hoboken Land and Improvement Company, against the said steam-tug "Cayuga," her engines, boilers, machinery, &c., on a cause of collision.

And thereupon the said claimant alleges as follows:

First. That this claimant, before and at the times in said libel mentioned and referred to, was, and ever since has been, and is, the sole owner of said steam-tug "Cayuga," her engine, boilers, machinery, tackle, apparel, and furniture.

Second. That this claimant has no knowledge of the matters alleged in the first article of said libel, and therefore denies the same.

Third. That except as hereinafter expressly admitted, this claimant and respondent has no knowledge of the matters alleged in the second article of said libel, and therefore denies the same, and each and every part thereof.

25 Fourth. And this respondent further answering to the particu-

lars of the collision alleged in the third, fourth, and fifth articles of the libel, alleges, on information and belief, as follows:

That on the afternoon of the day of the collision, on the day of June, 1866, in said libel referred to, the said steam-tug Cayuga, with a licensed pilot on board, (and who was at the wheel at the time of the collision,) and in other respects well and properly manned, equipped, and furnished, left the pier where she takes in water, above the Desbrosses-street ferry slip, on the North River side of the city of New York, and went out into the river, the tide being at that time and thereafter ebb, and rounded to, up the river, bound for off a pier at the foot of Hubert street for a boat there, for which she had an order, to take the same in tow. That when the Cayuga got off the said pier near enough to hail said boat to be taken in tow, the boat was found to be so jammed in that she could not get out the slip where she was lying without great delay, and thereupon the Cayuga, then heading up the river, rounded off into and down the river, to go down the river and around into the East River, to take up boats waiting for her there, to be towed
26 up the Hudson River, to Albany, and other places on the Hudson; that in rounding from off the pier at the foot of Hubert street out into the river, the Cayuga went well out into the middle of the river, and then straightened down, and was proceeding down the river when the James Watt, in said libel mentioned, came down the river behind, and off the Cayuga's starboard stern quarter, and well off toward the Jersey shore, and was inclining toward the New York side of the river; that the James Watt, as she was nearing and overtaking the Cayuga, straightened down the river off to starboad of the Cayuga, and going at a greater rate of speed than the Cayuga, got ahead of the Cayuga, and then sheered right across the bow of the Cayuga, from a distance ahead of the Cayuga of her length, or thereabouts, at full speed, and without stopping or reversing her engine, which was followed, within a few seconds, as a consequence of this movement of the James Watt, by the two steamboats coming together, the stem of the Cayuga striking against the port stern quarter of the Watt, as she was crossing the bow of the Cayuga, without stopping or checking her headway, carrying away the facing piece of the Cayuga's stern about six
27 feet in length, and about twelve inches wide to port, and at the same time ripping off a part of the wearing piece, plank shear, and bucking piece and rail of the Watt. That before the sheer aforesaid of the Watt across the bow of the Cayuga, which last was going down the river on the ebb tide, the two vessels were not on courses crossing each other, so as to involve any risk of collision, which was apparent, or which could have been apprehended by the pilot and persons navigating the Cayuga, or with notice of which they were chargable. That immediately on discovering said sheer of the Watt, which was without any signal or previous notice to the Cayuga, the Cayuga's bells were rung to slow and te stop her engine, and were promptly obeyed, and just as the Cayuga's engine was stopped, the two boats came together as aforesaid. That the Cayuga did all she could do to avoid the collision after any reason on her part to apprehend danger of, or any risk of, a collision which happened, and the damage therefrom, through the fault of the Watt's coming up from behind the Cayuga, and passing her, and sheering across her bow from so short a distance ahead as to render the collision inevitable by the persons in charge of and navigating the Cayuga. That the place of the collision was near the
28 middle of the river, and about off the foot of Robinson street, and there was nothing in the way or to prevent or interfere with the

Watt's passing under the stern of the Cayuga, as the Watt was approaching and overtaking the Cayuga, or from stopping and going under the stern of the Cayuga before the Watt crossed the bow of the Cayuga, as aforesaid, or from porting her helm or continuing her course before her sheering, as aforesaid, across the bow of the Cayuga. That the Watt's coming up from behind, had a full view of the relative position and course of the Cayuga, and could, with entire ease and safety, and under the circumstances it was her duty to, keep out of the way of the Cayuga. And these respondents deny each and every allegation in the said third, fourth, and fifth articles of said libel, except so far as the same are hereinbefore in this article admitted, either expressly or by necessary implication.

Fifth. And this respondent, further answering on information and belief, denies each and every of the allegations in the sixth article of said libel, and every part thereof, except so far as any of them
29 are admitted in the foregoing fourth article of this answer; and it alleges, on like information and belief, that said collision and the damages arising therefrom, happened by reason of the mismanagement, incompetence, negligence, or other fault of the pilot and persons in charge of and navigating the said James Watt, in proceeding across the bow of the Cayuga, instead of going under her stern, and in not stopping and reversing her engine in season to avoid said collision, and in not keeping a proper lookout, or other misconduct, negligence, insufficiency or fault on the part of the said steamboat Watt, and not through any mismanagement, negligence, or fault on the part of said steam-tug Cayuga.

Sixth. These respondents are informed and believe that the particulars and amount of the damage, the value of the use of the Watt, the extent of the repairing made necessary by said collision, and of the time required for said repairs, as alleged in the seventh article of said libel, are greatly overstated, but for want of any definite knowledge of the extent of said particulars of damage, these respondents deny the several allegations in said seventh article of libel contained, in respect
30 to said damage, and each and every of them, and every part thereof, and they deny, on information and belief, that any part of said damages was occasioned by any negligence, want of skill, or improper conduct of the persons navigating the Cayuga, and they also deny that whatever damage was sustained by the libellant, by reason of said collision, was occasioned otherwise than by or through the fault, negligence, and improper conduct on the part of the persons navigating said steamer James Watt, or that the same was occasioned without negligence & fault on the part of said steamer James Watt, conducing and contributing thereto.

Seventh. These respondents admit that the libellant has applied to this claimant or its agent for a settlement of damages alleged to have been sustained by the collision referred to, and that this claimant, or its agent on its behalf, has denied and denies any liability therefor, or for any part thereof.

Eighth. This claimant admits the ninth article of said libel.

Ninth. That all and singular the premises are true.

31 Whereupon the claimant and respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the said libellants in costs.

The Hudson River Steamboat Company,

By HENRY SMITH, *Agent.*

C. VAN SANTVOORD,
Proctor for Claimants & Respondents.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Henry Smith, of the city of New York, being sworn, says that he is the agent of said claimant, The Hudson River Steamboat Company, in the city of New York; that he has read the foregoing answer, and knows the contents thereof, and that the same is true to his knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

HENRY SMITH.

Sworn to before me this 27th day of December, 1866.
JAMES BETTS METCALF,
U. S. Commissioner, S. 81, *Dist. of U. S.*

32 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms in the city of Brooklyn, on Thursday, the 18th day of April, in the year of our Lord one thousand eight hundred and sixty-seven.

Present, the Honorable Charles L. Benedict, district judge.

THE HOBOKEN LAND AND IMPROVEMENT COMPANY
against
THE STEAMER CAYUGA, &C., RESPONDENT.

Cause called in its order on the calender. Parties appear and answer ready. Hearing ordered. Abbett & Fuller, proctors for libellants. C. Van Santvoord, proctor for claimant. Pleadings read.

Evidence for libellant:

Albert De Puget	Sworn & examined.	
Thomas Smith	"	"
John L. Brown	"	"
Mott Birdsall	"	"
Charles Chamberlain	"	"
John Dewold	"	"
William Ketchum	"	"
Harvey H. Brown	"	"
Isaac H. Alling	"	"
William Brown	"	"
N. Heidecker	"	"

Hearing adjourned until April 19th, 1867.

APRIL 19TH, 1867, 12 M.

Hearing continued.

Evidence for libellant:

Elijah E. Brown	Sworn & examined.
John L. Brown	Recalled.

33 Libellants rest.

Evidence for respondent:

Andrew Foster	Sworn & examined.	
George A. Huyck	"	"

John McCann	Sworn & examined.	
Orlando P. Titus	"	"
John T. O'Connor	"	"
Wm. R. Hoffman	"	"
Peter E. Post	"	"
Andrew Foster	Recalled.	
William W. Betts	Sworn & examined.	

Respondents rest. Testimony closed.

(Indorsed:) Vol. ——, No. ——. United States district court for the eastern district of New York. The Hoboken Land and Improvement Company vs. The Steamer "Cayuga." Extract from minutes. Filed and ——— day of ——, 187–.

34 District court U. S., eastern district of New York. In admiralty.

HOBOKEN LAND AND IMPROVEMENT CO., libellants, *against* STEAMER CAYUGA, RESPONDENT.

[The libel and answer were read, and the allegations of incorporation and ownership admitted.]

N. L. DUPUGET, a witness on the part of the libellant, sworn and examined, says:

Question. What is your occupation?

Answer. I am civil engineer, and at present am city surveyor of Hoboken.

Q. Did you make this map and diagram?

A. I did.

Q. From what was the map taken showing the outline of the shores of New Jersey & New York?

A. From a map made by the commissioners for fixing the water-fronts of New Jersey; a map by Bacot, appointed under the act of 1864.

Q. That map is correct, showing the river, shores, piers, ships, &c.?

35 A. Yes; it is the most correct one I could get. It is on the scale of four hundred feet to the inch, and the points and positions marked thereon are correct.

Q. Do you know of any ferry-boat named the James Watt?

A. I do.

Q. Were you on board last summer during the collision?

A. I was.

Q. State what you saw in reference to the matter, and what part of the boat you were on.

A. I was on the fore part of the boat, talking with Mr. Chamberlain, when I heard the whistle of the James Watt, and hearing the whistle I turned round to see what the cause of it was, and saw the Cayuga coming towards us through the windows of the boat.

Q. That is, you looked through the window and saw the Cayuga coming towards you?

A. Yes, sir. The Cayuga was on our left, coming towards us. Mr. Chamberlain made the remark that "that boat was going to run into us,

he thought." In a little while she struck. I went to the rear of the boat and saw the Cayuga had struck us.

Q. The Cayuga is a much larger boat than the Watt?

A. I do not know how that is.

36 Q. The James Watt was on the right-hand side of the Cayuga?

A. She was.

Q. Both were going down the river?

A. Both were going down the river.

Q. It is alleged in the answer that the James Watt came up behind the Cayuga and sheered across her bows. Is that so?

A. She did not.

Cross-examined:

Q. This map was made from what?

A. From a map made by Bacot; made for the commissioners for fixing the river pier-fronts, filling in the bulk-heads, & piers & lines.

Q. You copied it from that map?

A. I did.

Q. You did not verify the survey in any way?

A. Not for this purpose.

Q. On what part of the Watts were you at the time of the collision?

A. On the front of the Watts, in front of the ladies cabin, outside the cabin.

Q. You heard the whistle, did you?

A. I heard the whistle.

Q. What boat did the whistle come from?

A. The James Watt.

Q. One blast, or two blasts?

37 I do not recollect whether there was one or two; my atttention was attracted by the whistle.

Q. The whistle attracted your attention to the relative position of the boats?

A. Yes, sir.

Q. Then you looked out of the window and saw what part of the Cayuga coming toward what part of the Watts?

A. The Cayuga appeared to be coming directly towards us.

Q. Her stem did?

A. Yes, sir.

Q. How soon was that after you heard the whistle?

A. Immediately upon hearing the whistle.

Q. Before that you had not observed the course of the boats; your attention had not been called to it?

A. No, sir; I was looking in front of me.

Q. Before that you were looking in front?

A. Yes; the course the James Watt was pursuing.

Q. What was in front of you?

A. The city of New York, to the front and one side.

Q. The line of the boat, if continued, would have carried you into the city?

A. Yes; in the neighborhood of away down the river.

38 Q. How far down?

A. As far as the Battery.

Q. As far as that?

A. Yes, sir; my attention was not particularly directed to that, and I could not define it very well.

Q. Your attention was not drawn much to the boat.

A. No, sir.
Q. Before you heard the whistle you were talking with whom?
A. With Mr. Chamberlain.
Q. How long had you been talking with him?
A. Since we left Hoboken.
Q. You did not notice particularly as to where you were, as to your place in the river, whether about the middle or nearer the New York or the Jersey shore?
A. I noticed we were about one-third of the way across nearest the New York shore.
Q. Nearer the New York shore than the middle of the river?
A. No, sir; nearer the New York shore than the New Jersey shore, about one-third of the way across.
Q. Then you were nearer the New York shore than the New Jersey shore?
Yes, sir; it was one-third of the way across.

Re-direct examination:

39 Q. The Cayuga was not ahead of you at any time?
A. She was not.
Q. You were looking sidling through the cabin window?
A. I was looking ahead of the boat. I was talking with Mr. Chamberlain, and I had to swing around when I heard the whistle. It was a three-quarter wheel around.

By the court:

Where about did you stand exactly?
A. I stood just in front of the end of the partition coming out from the cabin by the wagon track in front of the roof. I saw it through one of the windows in the end.
Q. How far back of you was the window?
A. Four or five feet on the angle.
Q. Did you see either side of the Cayuga as you looked at her?
A. I saw her coming right face on to us.
Q. Did you see one side or not—either wheel?
A. I did not. She was almost bows on.

THOMAS SMITH, a witness on the part of the libellant, being duly sworn and examined, says:

Q. What is your occupation?
A. Pilot.
Q. Are you a licensed pilot?
A. Yes, sir.
40 Q. Have you your license with you?
A. I have.
Q. How long have you been pilot?
A. About five years.
Q. How long have you been connected with steamboating and the water?
A. About eight or nine years steamboating; have been boating all my life.
Q. You were the pilot of the James Watt at the time of the collision, of which you have heard the testimony?
A. Yes, sir; I was master and pilot.
Q. The James Watt, on the 13th day of June, 1866, when this col-

lision is alleged to have taken place, was employed in the regular business of transporting passengers?

A. Yes, sir.

Q. She was safe, strong, well-manned, her tackling, &c., in good order, and well appointed?

A. She was.

Q. You were the regularly-licensed pilot?

A. Yes, sir: I was. I was a licensed pilot at that time.

Q. The James Watt had the usual and necessary compliment of officers and men?

A. Yes, sir.

Q. And during that day and afternoon you and the crew were on the lookout for the safety and protection of the vessel?

A. Yes, sir.

Q. Was there a collision on that day?

A. There was.

Q. Between the James Watt and the Cayuga?

41 A. There was.

Q. Was the James Watt in her usual track?

A. She was.

Q. Now describe the circumstances of the collision in your own way. First look at that diagram, and state whether there is a correct representation. State in your own way, and tell your own story.

A. About a quarter to four I was in the wheel-house. Mr. Birdsall was with me. We had just left Hoboken to go to Barclay street. When about half way or nearly half way out in the river, I perceived the Cayuga coming on the New York side. She ran out into the river, and sheered down to the southward. I still kept my course, and after we got on near the Cayuga, the Cayuga's engine stopped suddenly. When about opposite Hubert street, or a little below, I then, of course, seeing her stop her engines, thought I had a right to go ahead, which I did. She only stopped for a moment when she started ahead again. I then blew one blast of the steam-whistle for her to pass under my stern. She paid no attention to it and gave me no answer that I could see. If she had blown it, I would have seen it; but I neither heard nor saw it, and I was looking at her. I was then heading about southeast or east-by-south, and the Cayuga was heading about south-southwest.

42 When opposite Chambers street, or a little below, she ran into the James Watt on her port side stern quarter, pushing the stern of the James Watt around, so as to head her up the river.

Q. How did you say you were heading?

A. About east and by south.

Q. What is your general course from your slip in Hoboken to the Barclay street slip?

A. About sou'-southeast.

Q. And you were steering about that course?

A. No; we were steering further down the river, keeping further off the shore.

Q. Then you were steering south-by-east?

A. No; that would be further up yet.

Q. Look at this diagram, and see whether that illustrates, in your judgment and recollection, the relative positions of the two steamers, when the Cayuga's engine first stopped?

A. I mean by east of south the first point east of south. The Cayuga did not blow. The James Watt blew.

Q. When her engine stopped, were they about the same as the positions in this drawing?

A. I should think that was about right.

Q. Was this drawn under your direction?

43 A. Yes, sir.

Q. That was about the relative position of the two boats when the Cayuga's engine first stopped, in your judgment, without reference to the map?

A. It was.

Q. What was the distance apart [o] from the two boats?

A. About three or four hundred yards.

Q. That was about opposite Hubert street, or a little below?

A. Yes.

Q. How near the Jersey shore?

A. Two-thirds of the way across from New Jersey to New York.

Q. What was the course steered by the James Watt, when you first saw the Cayuga, or when in this position just before she stopped?

A. She was heading on the New York shore about one point from the south.

Q. What course did the Cayuga steer?

A. About sou'-sou'-west.

Q. Did you continue on the same course?

A. I did.

Q. What course did the Cayuga keep?

A. Same course.

Q. The respective positions you have stated were as illustrated on that diagram?

44 A. Yes, sir.

Q. You are familiar with the rules and regulations for the government of pilots?

A. Yes, sir.

Q. Tell me whether in these rules and regulations there is anything approximating to your position there at the time the Cayuga's engine stopped.

A. Yes, sir.

Q. Which situation?

A. Situation five, with the exception of the Watt's being further ahead.

Q. You have stated that you kept your course. What would have been the effect, in the situation that you were when the Cayuga started her engine ahead, of porting your helm?

A. It would have made the accident worse.

Q. Worse, or more certain?

A. By porting my helm, it would have swung the stern of the James Watt more around in contact with the Cayuga, and cut her a great deal worse.

Q. What was the direction of the wind and tide?

A. It was the last of the ebb, and the wind north, light.

Q. What was the rate of speed of your boat?

A. Nine or ten knots.

45 Q. What was the rate of speed of the Cayuga at the time?

A. The Cayuga was going considerable faster; about 10 or 11 knots.

Q. She is a larger and heavier boat than yours?

A. Yes, sir; a good deal heavier and stronger.

Q. How far apart were the steamers when the Cayuga's engine started ahead again?

A. There was very little difference; they were about the same. Her headway was still going.

Q. You were heading about the same—south-by-east?

A. Yes, sir; about the same—south-by-east.

Q. Were you at the wheel yourself, and Mr. B.?

A. I was.

Q. Was the wheel-house of the James Watt in the best position for looking out?

A. Yes, sir.

Explain how that is on your boat.

A. Like all ferry-boats, up clear of every thing. Nothing obstructs the view. I had all the four windows down. Our wheel-house was round with windows all round.

Q. When the Cayuga stopped, which window did you look through?

A. I looked through the back window.

Q. Was there any danger of collision by your continuing your course when the Cayuga first stopped her engine?

A. No, sir; none.

Q. You blew your whistle?

46 A. I did.

Q. How many?

A. One.

Q. A short distinct blast of the whistle?

A. Yes, sir.

Q. How far apart were the steamers when the whistle was blown?

A. About two hundred and fifty or three hundred yards.

Q. What does the meaning of one blast signify under those circumtances?

A. To pass to the starboard.

Q. Is that the usual signal among pilots under such circumstances?

A. Yes, sir.

Q. At the time you blew your whistle, could the Cayuga have easily and readily passed under your stern without difficulty?

A. She could, sir, with ease.

Q. The Cayuga did not answer your whistle?

A. Not as I saw.

Q. Were you looking out for it?

A. I was; I always do.

Q. Was it their duty to answer?

A. It was.

Q. Is it the custom among pilots and nautical men?

A. It is.

Q. When the Cayuga's engine started again after its stoppage, what alternative had you, if any, besides continuing your course?

A. None, but to go ahead and get out of the way, if I could.

47 Q. Supposing you had altered your course, or stopped?

A. I think the ferry-boat would have been sunk. It would have rendered it inevitable and more disastrous than it was.

Q. At the time the Cayuga's engine stopped, what relative position did the Cayuga have toward the Watt?

A. The Cayuga had the Watt on her own starboard side when the engine started again.

Q. Could the Cayuga, at the time her engine stopped, have avoided the collision; and if so, how?

A. Yes, sir; easily, by porting her helm, and passing under the stern of the Watt.

Q. How much would have cleared her?

A. Half a point of the compass.

Q. State the nature and extent of the injury?

A. She broke through the wearing ports and plank lining under the guard, tore away the plank on the opposite side, and broke off the ends of the deck beams.

Q. Was the collision caused by the negligence, or inattention, or want of skill of anybody on board your boat?

(Objected to. Withdrawn.)

Q. What, in your opinion, caused the collision?

A. I think it was negligence on the part of the pilot of the Cayuga, in not answering the whistle and porting the helm.

48 Q. Could she have avoided the collision any other way than by porting the helm?

A. Yes, sir; she could have stopped.

Q. If she had remained stopped when her engine first stopped, would she have avoided the collision?

A. She would.

Q. Was the Cayuga at any time in front of you?

A. No, sir.

Q. Did you sheer across her bows?

A. No, sir.

Cross-examined:

Q. On what steamboats have you been pilot?

A. Only on the ferry-boats.

Q. Anything else than ferry-boats?

A. No, sir.

Q. Have you ever been pilot on any other ferry-boats except the ferry-boats of the company, from Hoboken to Barclay street?

A. No, sir; I never have been on other ferry-boats as pilot.

Q. How large is this ferry-boat?

A. She is one hundred and eighty-five feet long. She was brought on this route, because she was a larger boat.

Q. You left the slip at Hoboken bound for Barclay street?

A. Yes, sir.

49 Q. Did you see the Cayuga when she came out of Desbrosses street?

A. I did not see her when she came out, but saw her soon after; she had got about one hundred yards from where she was moored, from what I can remember.

Q. When you saw her, she was out in the river?

A. Yes, sir.

Q. And you do not know from what slip she came out?

A. Not exactly, but I know where she lay before she started out. I knew she lay there, because I saw her.

Q. Do you know the Cayuga?

A. I know her as far as I can see her.

Q. When you say she came out of Desbrosses street, it is a mere inference from the fact that you had seen her there sometime before?

A. I saw her in Desbrosses street before that, and right afterwards saw her in the river.

Q. But you did not see her coming out?

A. No, sir.

Q. Had you left the slip at Hoboken when you first saw the Cayuga out in the stream?

A. I had, sir; and was about opposite Desbrosses street in the middle of the river.

Q. Was she opposite Desbrosses street too?

A. She was then a little below, swinging around in a little circle, as they always come out of their dock.

Q. She was below Desbrosses street, and you were out in the river opposite Desbrosses street?

50 A. Yes, sir.

Q. What part of the river were you, as between the shores and the middle?

A. I was on the west side of the middle of the river.

Q. Was she heading down the river at that time?

A. She was heading then for about southwest.

Q. Would that be about the range of the coal docks at the lower end of Jersey City? Toward what part of the Jersey shore was the Cayuga heading at the time you first saw her?

A. She was heading down about the central docks—the Central Ferry; when she stopped she was heading about sou'-sou'west—further down yet.

Q. By the "Central Ferry," I suppose you mean the New Jersey Central Railroad Ferry?

A. Yes, sir; on the Jersey side, below the canal basin.

Q. Then when you first saw her, you was opposite Desbrosses street, a little to the west of the middle of the river, and the Cayuga was further down. How many points did she bear off your port bow?

A. I cannot say; not to be positive. I should think about two
51 or three points off our port bow astern. She was behind me. I was in advance.

Q. You have stated that when you first saw the Cayuga, you was opposite Desbrosses street?

A. I was about opposite there.

Q. At that time the Cayuga was below Desbrosses street?

A. Well, she was about opposite Desbrosses street. She could not be much different from it, if she comes square out in the river. I could not say she was exactly opposite Desbrosses street, but pretty nearly.

Q. When you first saw the Cayuga, how did she bear with reference to your port bow?

A. She was nowhere near our port bow?

Q. Did she have any bearing off your port bow?

A. No, sir; I made a mistake in my answer.

Q. Is there a flagstaff forward on the James Watt?

A. Yes, sir.

Q. Where is that?

A. It stands on the starboard side at the end of the gentleman's cabin.

Q. How far aft from the stem of the boat?

A. I should judge about twenty-five feet.

Q. It is used to haul a light up at night?

52 A. Yes, sir; in case we want to use it; or to hoist colors, or any thing else.

Q. Is it abaft your wheel-house?

A. No, sir; forward about ten or fifteen feet.

Q. Is that the only mast forward by which you can take a range in steering that boat?

A. Yes, sir; the ferry-boats carry no masts forward—none of them.
Q. And this boat did not?
A. No, sir; not to steer by.
Q. How did you get range of the objects in the river?
A. We don't require any range, we take objects from ahead if we want them.
Q. When you saw the Cayuga off Desbrosses st., that was the first time you saw her on that trip?
A. Yes, sir.
Q. At the time when you first saw the Cayuga, where would the line of direction of the James Watt, if continued, strike the New York shore—what street?
A. I suppose it would fetch up somewhere about Courtlandt or Liberty street.
Q. Then she was headed pretty well down the river—the James Watt?
A. Yes, sir; going pretty well down.
Q. A little to the westward of the direct course, straight down?
53 A. Yes, sir; enough to keep off the shore merely.
Q. At that time was the Cayuga ahead going down the river?
A. No, sir; she was not ahead of the James Watt that day.
Q. Then the Cayuga was not ahead of the James Watt at any time after you saw the Cayuga on that voyage?
A. I do not understand you.
Q. The Cayuga was not at any time before the collision, and after you saw her, further down the river than the James Watt?
A. No, sir; the Cayuga was not ahead of the Watt before the collision.
Q. At no time after you saw her?
A. At no time after I saw her and before the collision.
Q. You have spoken of the wheel of the Cayuga being stopped before the collision?
A. Yes, sir.
Q. How do you know that?
A. I saw the wheel stand still, and the beam of the engine.
Q. How long was that before the collision?
A. I cannot say, not more than half a minute I suppose. It might have been three-quarters of a minute.
Q. How long was that after you first saw the Cayuga?
54 A. After she stopped her wheels and I first saw the Cayuga?
Q. Yes.
A. I suppose about a minute.
Q. Do you think it was a minute?
A. It might have been about that; yes, sir.
Q. How long a time after that did the collision happen?
A. After the wheel stopped?
Q. Yes.
A. From the time the wheel stopped to the collision, I suppose it was little more than a minute; a minute and a quarter to a minute and a half.
Q. Then when you first saw the Cayuga, were you bearing off the Cayuga's side, or on her starboard bow?
A. I was off the Cayuga's starboard bow, on the forward quarter—the forward part of the wheel-house.
Q. Then after that, did you change your direction more to the eastward?

A. No, sir; my wheel never started one spoke; I was running with the tide and running streight.

Q. Was your wheel put starboard at any time before the collision?

A. Only when we first came out of the slip.

55 Q. After you saw the Cayuga?

A. No, sir.

Q. It was not put starboard any time after you saw the Cayuga?

A. No, sir.

Q. At the time of the collision you were heading for New York in above Barclay street, were you not?

A. No, sir; was heading for Liberty street—Cortlandt or Liberty—at the time of the collision.

Q. Not at a point higher up?

A. No, sir; not until after the collision.

Q. Was your boat slowed or stopped or backed at any time before the collision.

A. No, sir.

Q. Were any signals given on the ferry-boat to slow or back before the collision?

A. No, sir. We had no cause for it.

Q. Did you see the wheel of the Cayuga stop more than once before the collision?

A. No, sir.

Q. Did you see the wheel start ahead again after it had been once stopped?

A. Yes, sir; I saw it revolve.

Q. After she had once stopped?

A. After she stopped that time.

Q. Which way did it revolve?

56 A. Ahead, down the river.

Q. What were you doing at that time?

A. I was attending to my business, steering and looking out.

Q. You were able to see that that wheel went forward?

A. Yes, sir; that was my business, to watch boats and see what their motion is.

Q. You say that you know the Cayuga and you know that Desbrosses street is her dock?

A. I do not know that it is her dock. I know she lay there several times last summer.

Q. You saw her then coming from there around into the East River?

A. Yes, sir.

Q. What was her business?

A. Towing boats to Albany.

Q. Do you know where she takes her boats from?

A. No, sir.

Q. You know she goes to East River to pick her tow up?

A. Yes, sir.

Q. Did you know this was the usual time when she goes around to the East River to pick up boats?

57 A. Sometimes she picks up her tow in the North River. She goes around in the afternoon.

Q. Did you know she was dropping around to pick up boats?

A. I supposed she was.

Q. And knew then she was going down the river?

A Yes, sir.

Q. You did not see the Cayuga until you bore off her starboard bow?

A. I did not see her until I was off her starboard bow.
Q. What was you doing before that?
A. I was attending to my business at the wheel.
Q. You were not talking, smoking, or otherwise occupied?
A. No, sir; I was not smoking; I do not smoke.
Q. It was after you first saw the Cayuga when you were off her starboard bow that you saw this wheel stop?
A. I was on the Cayuga's starboard bow when I saw her wheels stopped.
Q. And how far off do you estimate you were when the Cayuga's wheel stopped?
A. About three hundred yards or thereabout.
Q. Which way were you looking at that time?
58 A. I was looking forward and looking all around the river.
Q. At that time you were looking all around the river?
A. It was my business to look around the river, from the beam or two points of the beam thereabouts ahead.
Q. After you saw this wheel stop did you look again to the Cayuga until they came together?
A. Yes, sir; I saw her several times. I looked at her, and looked ahead again.
Q. After you saw the wheel stop, was it as long as a minute before the collision?
A. It was more than a minute from the time the wheel stopped to the collision.
Q. How much more?
A. About a minute and a quarter or a half.
Q. Then the whole time between your first seeing the Cayuga and the collision was about two minutes and a half?
A. Yes, sir; from the time I first saw her stop it was about two minutes and a half, or within that.
Q. The whole thing was pretty sudden, was it?
A. Yes, sir; as quick as they could come together very well in their condition.
59 Q. What was the rate of speed of the Watt?
A. I suppose about nine or ten knots that day—about the rate she usually runs.
Q. The tide was ebbing?
A. Yes, sir.
Q. Was that nine or ten knots through the water, or by the land?
A. By the land.
Q. When you first saw the Cayuga if you had stopped still, where would she have passed you?
A. May be a hundred yards across the bow of the ferry-boat, I was just about to stop when the Cayuga's engine stopped.
Q. Did you ring your bell or give any signal to your engineer to go ahead?
A. No, sir; I made no signal to the engineer.
Q. When you give a signal to another steamer by one blast of the steam whistle, do you understand that to be a notice to the other steamer, that you are going to put your helm to port, or starboard?
A. That is owing to circumstances; when I blow one whistle I mean that I am going to starboard.
Q. That is to put your helm to port?
A. Yes, sir; it means that I am going to pass to the right.

60 Q. When the whistle was blown on the Watt, was it one whistle?
A. One whistle.
Q. When did you first think there was danger?
A. When the Cayuga started ahead.
Q. How long before the collision was this one signal by this one blast given?
A. About a minute.
Q. And at that time you say you were heading down the river?
A. I was heading down about Cortlandt or Liberty street—in there.

61 JOHN L. BROWN, a witness on the part of the libellant, sworn and examined:
Q. What is your occupation?
A. Pilot.
Q. Are you a regularly-licensed pilot?
A. Yes.
Q. Have you your license with you?
A. I have.
Q. How long have you been pilot?
A. About ten years.
Q. How long have you been following the water?
A. About thirty years.
Q. Do you know anything of this collision of which you have heard the testimony?
A. Yes, sir.
Q. Did you see it?
A. I did.
Q. State where you were and what you were about.
A. I was going from Barclay street to Hoboken. I was on the "Hoboken," another boat. I saw the Cayuga coming down the river, and the Watt going partly across the river to her slip. I saw the Cayuga run into her. I did not see her stop her engine until she struck.
62 After she struck she got on her course and went on.
Q. Did you hear or see any signal?
A. No, sir.
Q. Do you know what course, about, the vessels were steering?
A. I should judge the Cayuga was going about sou'-sou'west, and the Watt about sou'-sou'east.
Q. When you first saw the Cayuga and Watt, what were their respective positions to each other; which was on the starboard side?
A. The Watt was on the starboard side of the Cayuga. The Watt was ahead of the Cayuga. The Cayuga had the Watt on her own starboard side.
Q. Was the Cayuga ahead of the Watt at any time?
A. No, sir.
Q. You were in a good position for observing anything that took place?
A. Yes, sir.
Q. Where about were you on your boat?
A. In the pilot-house.
Q. You did not see the Cayuga's engine stop?
A. No, sir; until she struck. Then I saw it stop.
63 Q. State what caused the collision, in your judgement.
A. I think carelessness on the Cayuga's part.
Q. What way?

A. In not stopping the boat [or] *and* sheering off.

Q. Could the Cayuga have avoided the collision very easily by porting her helm?

A. Yes, sir; very easily.

Q. How much?

A. One point, certainly.

Q. Could she have avoided the collision any other way?

A. By stopping.

Q. By stopping or porting her helm?

A. Yes, sir.

Q. When you first saw these boats, were they going on converging lines, so that if they had continued on their respective courses they would have come together?

A. Yes; that is the reason I noticed them.

Q. The Watt was ahead, on the starboard side of the Cayuga?

A. Yes, sir.

Q. Do you know which is the fastest boat?

A. I never saw them tried, but I suppose the Cayuga would be considerably the fastest.

64 Q. What was the rate of speed of the two boats when you first saw them?

A. I should judge the Watt was going about nine knots, and the Cayuga about ten or eleven.

Q. Is the Cayuga a heavier and larger boat?

A. Oh, yes.

Q. Did you see anything about the conduct of the Watt that was faulty or negligent on her part?

A. I did not.

Q. She did what should have been done under the circumstances?

A. She done as I should have done.

Q. In your opinion she did not contribute to the injury at all.

A. No, sir.

Cross-examined:

Q. What called your attention to these boats?

A. The directions they were steering. I mentioned to my helmsman that if they did not alter their course there would be a collision, and for that reason I watched them.

Q. When you first saw these boats the collision was imminent?

A. Yes, sir.

65 Q. They were on such a course and so close together as to suggest that idea?

A. Yes, sir.

Q. The collision occurred instantly?

A. Not instantly, for they were three or four hundred yards apart.

Q. Where were you in reference to them?

A. I was going up the river towards Hoboken.

Q. How much farther down were you?

A. I was further up. I had just passed them, so that I had to look a little astern to see them?

Q. When you first saw these boats, was the Watt further down the river than the Cayuga?

A. Yes, sir.

Q. That was shortly before the collision?

A. Yes, sir.

Q. Did you observe any change in the direction of the Watt?
A. I noticed there was no change in the course of either.
Q. Neither changed her course at any time before the collision happened, after your attention was called?
A. No, sir; not until the Cayuga hit the Watt, and shoved her stern around.

Q. Do you know the business the Cayuga was in?
66 A. Yes, sir,
Q. What was it?
A. Towing.
Q. Do you know where she was going when you saw her?
A. I suppose she was going to the East River.
Q. Do you say her course was sou'-sou'west?
A. I should judge so.
Q. Do you believe that that was her course by the compass?
A. That was about it; I did not observe the compass.
Q. For about what point on the Jersey shore was she heading—the Cayuga?
A. I should think she was heading for about the coal docks or Central Ferry—somewhere in that direction.
Q. For what point on the New York shore was the Watt heading?
A. For about the Jersey City Ferry, or Cortlandt street.
Q. That is as near as you can get it?
A. Yes, sir; I did not notice particularly, but would suppose that was about the course.
Q. When you give a signal by one blast of the steam-whistle to another steamer, do you understand that to be notice to her that
67 you are going to put your helm aport or starboard?
A. To port. We do not always put our helms to port; sometimes we stand our course. But if we are going to alter at all we pass to the right.

Re-direct examination:

Q. Look at that diagram and state whether it is a correct illustration of their respective positions; and if not, state wherein there is any difference?
A. It is as correct as can be at the point where I first saw them.
Q. You passed these boats?
A. Yes, sir.
Q. Which side?
A. I passed to the right; inside the Cayuga.
Q. Where was she as you passed her; what was she doing?
A. She was going down the river.
Q. How far did you pass from her?
A. Pretty close by her, probably fifty yard. I passed on the inside of her; the Watt was then west of her and a little ahead. I then thought there was danger of collision, and I kept my eye on them.
Q. How far apart were they then?
A. I should think they were four hundred yards.
Q. You heard no whistle, or saw no wheel stop?
A. No, sir.

68

69 MOTT BIRDSALL, a witness for libellants, being duly sworn testified.

Examined by Mr Fuller:

(F. J. W.)

Q. What is and has been your occupation?

A. I have been boating. This winter I have been driving a cart in New York. I have been boating all my days; most all of the time up to last winter.

Q. Did you see this collision of which you have heard these witnesses speak?

A. Yes, sir.

Q. You were on the Watt?

A. On the Watt.

Q. What was your position on that boat?

A. Wheelsman.

Q. Were you at the wheel at the time of the collision?

A. Yes, sir.

(F. J. W.)

Q. State the circumstances of that collision as you saw it, beginning at the time you first saw the Cayuga?

A. When I first saw her we were coming down from Hoboken across the river. I saw the Cayuga coming out in the river, which was astern of us. She came out and swung down the river some, and then stopped perfectly still, her engine and wheels, & we kept our course ahead, and she started ahead again, right away, or in a short time, and she came on down gaining on us a little; we blew one whistle for her, and there was no answer heard from her, then she came on down, and the consequence hit us.

70 Q. Where did she strike you?

A. On the port quarter, aft.

(Q. Do you know about what course the Cayuga was steering?

A. I should think she was heading nearly S. W., somewhere in that neighborhood.

Q. How was the Watt heading, about?

A. Well, we were heading somewhere about S. S. E.—somewhere in that neighborhood.

Q. What distance was the Cayuga from the Watt when the Cayuga's engines stopped?

A. Well, I should judge about 300 yards.

Q. How long did the engine stop?

A. Not but a short time.

Q. The Watt was keeping on her course, I understood you to say?

A. Yes, sir.

Q. And when the engine started ahead again the Watt blew her whistle?

A. Yes, sir.

Q. Was the Cayuga at any time ahead of you?

A. No, sir.

Q. She was on your larboard side?) F. J. W.

A. She was on the port side of us as we were going over.

Q. Did you at any time pass up ahead of the Cayuga and sheer across her bow?

A. No, sir.

Q. The wheel-house where you were—where was it?

71 A. It was on the upper deck.

Q. Was there any object to obstruct the view?

A. No, sir.
Q. Was it the best point on the boat for a lookout?
A. I should think it was; it was put there for that.
Q. (Showing diagram to witness.) Look at that diagram and state if it is a correct representation of the position of the boats at the time the engine stopped; and if not, state wherein it is incorrect or differs?
A. I should think that was about correct.
Q. What caused the collision?
A. Neglect of the Cayuga, I should think.
Q. Neglect to do what?
A. Neglect in doing her duty.
Q. What was her duty under the circumstances?
A. Stopping or heaving her wheel over to port.
Q. Either would have prevented the collision?
A. Either one, very easily.
Q. Could you see the pilots or the men at the wheel on the Cayuga?
A. Yes, sir.
Q. What were they doing?
A. The pilot stood at the wheel looking out like this, (illustrating,) leaning [out] forward of the pilot-house.
Q. Did you see whether they were moving their wheel?
A. No, sir; they were not moving it.

72 Cross-examined by Mr. Van Santvoord:

Q. How many years did you say you drove a cart?
A. No years.
Q. Did you not say you drove a cart?
A. Yes, sir; but not no year.
Q. You have not driven a cart before this winter?
A. No. sir.
Q. You are new at that then?
A. I was new when I commenced.
Q. Where did you say you were at the time of the collision?
A. I was on board of the James Watt.
Q. Whereabouts?
A. I was in her pilot-house.
Q. What were you doing there?
A. Helping steer.
Q. Not munching nuts, were you?
A. I was not chewing nuts, because I had none; I was doing my duty.
Q. Were you busy with the wheel?
A. I was steering, and looking out likewise.

Q. Who handled the wheel, you or Mr. Smith?
73 A. The pilot managed the wheel.
Q. Who had hold of it?
A. Both of us had hold of it.
Q. You had hold too?
A. Yes, sir.
Q. You one side and he the other?
A. Yes, sir.
Q. Who saw it first, you or Smith?
A. I am not positive which, but I think I saw it a little first.
Q. Did you call his attention to it, or he yours?
A. I called his to it.
Q. At the time you first saw the Cayuga were you off the starboard bow of the Cayuga?

A. When I first saw the Cayuga she was (F. J. W.) coming about at us; coming out of the (F. J. W.) docks about at us.

Q. And how near?

A. Well I suppose at that time when I first saw her, she was about 350 or 400 yards off.

Q. Is not that a very large estimate?

A. No, I should think not.

Q. Have you any idea what a distance 350 or 400 yards is?

74 A. Yes; it is a good deal longer on land than on the water, by the eye.

Q. Then, according to your estimate, she was from 350 to 400 yards off when you first saw her?

A. Yes, sir.

Q. And then was she coming right straight for you?

A. Yes, sir; just about I should think.

Q. Was your bow at that time nearer the New York shore than the Cayuga's bow?

A. No, sir; how could that be? His whole boat was closer than mine was. You can't get ours nearer, because he was coming out and we were going over.

Q. His bow was nearer to the New York shore than yours was?

A. Yes, sir.

Q. The Watt had not crossed the direction (F. J. W.) of the Cayuga at the time you first saw it?

A. Going across it.

Q. Then she was just crossing the line of direction of the Cayuga when you saw her?

A. Yes, sir; the Cayuga was crossing out (F. J. W.) from the docks at that time.

75 Q. Did you see the Cayuga leave the wharf?

A. I can't say I did.

Q. Don't you know you did not?

A. I won't say I did or did not.

Q. But when you first saw her, you (F. J. W.) supposed she had come out from the wharf?

A. Yes, sir; from the way she came out.

Q. In what part of the river was the Cayuga?

A. She was on the York shore.

Q. How near the middle of the river when you first saw her?

A. She was not one-quarter part of the way to the Jersey shore when I first saw her.

Q. How was she heading?

A. Heading off shore, down from the docks.

Q. For what point on the Jersey shore was she heading at that time?

A. Well off to the westward.

Q. Did you hear this signal on the "Watt?"

A. Certainly, I heard it.

Q. How long was that before the collision?

76 A. Well, it was but a short time before.

Q. Was it as much as half a minute?

A. Yes; a little more than that, I guess.

Q. How much longer?

A. I could not state.

Q. Who gave the order for it?

A. The pilot gave it himself.

Q. When you first saw the Cayuga how did she bear in reference to the Watt?

A. A little towards the stern; as she came out we were crossing.
Q. Did she bear off from the port quarter of the Watt?
A. Well, she was on the port side of us.
Q. Did she bear off your port quarter? Both ends of your boat are alike, of course.
A. Yes, sir; the bow changes every time you go across the river.
Q. When you first saw the Cayuga, where did she bear in reference to the Watt? Was she off the port quarter?
A. She was off the port quarter, certainly.
Q. When you first saw her?
A. Yes, sir.
77 Q. Whether the pilot had seen her there or not, you don't know?
A. *She* [He] saw her about the same time, I guess. (F. J. W.)
Q. At that time you estimate they were apart some 300 yards.
A. When we first saw her?
Q. Yes, sir.
A. I said a little more than that; I said 350 or 400 yards.
Q. How long was that before the boats came together?
A. I should think 2 minutes, or 2½; I can't tell exactly; somewhere in that neighborhood.
Q. Not 2½ minutes by the watch?
A. It may be 1½ minutes or more, either way; I can't say; I did not time, myself.
Q. At what rate of speed was the Watt going?
A. I should think about nine knots.
Q. Is that her usual speed?
A. Generally runs about that, some times a little more; 9 or 10 knots. (F. J. W.)
Q. 9 or 10 by the land?
A. When a boat goes, it goes by the land.
78 Re-direct:
Q. What was the rate of speed of the Cayuga?
A. Well, she was going some faster than we were; I should think some 11 knots.
Q. (Court.) Did you shift your wheel at all after you saw her?
A. No, sir; we kept our course.
Q. (Court.) You did not shift at all?
A. Enough to keep her straight.
Q. (Court.) Were any signals given to your engineer?
A. No, sir.
Q. (By Mr. Van Santvoord.) Was not your wheel put starboard?
A. It went starboard when she hit us.
Q. (By Mr. Van Santvoord.) Had you not put it starboard at any time after leaving the slip?
A. Why certainly; we have to put the wheel over to head her down the river.
Q. (By Mr. Fuller.) You mean to put your wheel a-port.
A. Yes, sir.
Q. (By Mr. Van Santvoord.) Did you notice a stoppage of the wheel on board the Cayuga?
79 A. Yes, sir.
Q. (By Mr. Van Santvoord.) How long was the collision after that?
A. It was a very short time after that; it was not a great while before we had the collision.

Q. (By Mr. Van Santvoord.) Was it half a minute?

A. A little more than half a minute.

Q. (By Mr. Fuller.) Did I understand you the Cayuga was coming down the river, swinging round?

A. That was when I first saw her.

Q. (By Mr. Fuller.) And she kept swinging more to the southward?

A. When she came out from the pier she had to swing down the river.

Q. (Court.) Which side of her did you first see when your eye dropped on her?

A. I don't know as I could say; I think when I first saw her, I could see her port wheel first; I guess about first.

80 CHARLES CHAMBERLAIN, a witness for libellants, being duly sworn, testified.

Examined by Mr. Fuller:

Q. What is your occupation?

A. Government inspector & gauger.

Q. You saw this collision about which you have heard the testimony?

A. Yes, sir.

Q. State where you were, and what you saw.

A. I was on the bow of the James Watt at the time the collision occurred, facing somewhat to the east, in conversation with Mr. Depuget, and I noticed her coming down the river pretty rapidly towards us, and remarked to myself that she would either have to stop or yaw off toward the center of the river, to get clear of us. Almost immediately afterwards I lost sight of her by the angle of the frame-work in front of the cabin. I heard the whistle blow once, understanding that that was a notice for her to go to the right, and but a short time elapsed when I heard the crash at the stern of the boat.

Q. How far off were the steamers when you first saw the Cayuga?

81 A. I should judge, sir, that the two boats were not over 1,000 or 1,200 feet apart.

Q. You are not a nautical man at all?

A. No, sir.

Q. Do you know which way the Cayuga was heading?

A. The Cayuga was heading down the river, what appeared to me, coming stern on toward her, a little off to the Jersey shore, while we were lying in the course for Barclay street, the tide running down, and his course as is usual with pilots; they head them for what would appear to be a block or two above, which would bring them down into their slip; my business there gave me some familiarity with their movements.

Q. When you first saw the Cayuga, which side of her did you see?

A. She was coming stern on.

Q. You could not say whether you saw one side or the other?

A. No, sir.

Q. What should you say occasioned the collision?

82 A. I should say, sir, it was an error of judgment on the part of the pilot of the Cayuga, not giving way enough for the ferry-boat to pass, or stopping.

Q. Did you hear any answer from the Cayuga, when the Watt's whistle was blown?

A. No[ne]t at all, sir; there was only the whistle from the one boat.

Q. Which side of the Cayuga was the Watt; how were their positions relative to each other? (F. J. W.)

A. The Watt was going across the starboard bow of the Cayuga, lying well across on her course to the slip.

Q. Will you look at that diagram, and say whether that represents correctly the respective positions of the boats; if not, explain wherein they differed when you first saw them?

A. I should say, sir, from my knowledge of the river, that that was as near the position the two boats were lying as I could judge.

Q. What part of the James Watt did the Cayuga strike?

83 A. Pretty well aft, the after part of the ladies' cabin. We went back, and examined the damage.

Q. How many feet was that from the stern of the boat?

A. Well, not over 25 feet.

Cross-examined by Mr. Van Santvoord:

Q. Were you conversing with Mr. Depuget when you observed the Cayuga?

A. I was, sir.

Q. What first called your attention to her?

A. Merely a glance to the eastward. I noticed the boat coming down the river, glancing northward and eastward from the way I stood.

Q. How was the ferry-boat heading at that time; toward what wharf on the New York side?

A. She was running in a glance line (F. J. W.) to what I should think would be a little above Cortlandt street, running a little in the direction of Trinity steeple.

Q. Where was she bound to?

A. Bound to Barclay street.

Q. Was it not little above Barclay street?

84 A. The nose of the boat?

Q. Yes.

A. It might have been, but my judgment at this time would be that she was keeping that course, as I (F. J. W.) know they run according to the tide, a little more on a glance, or a little more swinging round.

Q. When a boat is crossing from Hoboken to Barclay-street slip, on an ebb tide, does she aim for a point below the slip or above the slip before entering?

A. I have seen them do both, sir. I have seen them aim for what apparently would be Chambers street, & then be compelled to verge off for something that was coming up.

Q. Under proper management? You have been over that ferry?

A. Very often.

Q. Did you ever know a boat that was going from Hoboken to Barclay street for a slip, when about entering the slip on an ebb tide, aim otherwise than for a point above the slip she was approaching?

85 A. Yes, sir; I have.

Q. Under what circumstances?

A. Under circumstances where there are obstructions in the way, vessels lying in the river.

Q. Where there are none?

A. Where there are no obstructions I have generally noticed them pointing as near the slip as they can, edging in towards the shore.

Q. Don't the state of the tide, whether flood or ebb, make some difference as to whether they point above or below, or in the slip?

A. I have always understood it so.

Q. Have you not observed it so?

A. Always understood it so.

Q. How have you understood it?

A. Understood it that they generally give a little in favor of the tide. That was so as to enable them to get there; but I would say that, since the running out of that long dock there, they have (F. J. W.) diverged somewhat from the manner they used to. They used to run in closer, and now have to give it a little more room.

Q. Which way?

86 A. They have to turn a more acute angle, running more to the southward.

Q. More opening to the southward when the tide is running down the river?

A. Yes, sir; they have to turn an acute angle now. They used to have a kind (F. J. W.) of basin there, & so swing in.

Q. This signal you heard. What was it?

A. I only heard the blast of the whistle.

Q. How many?

A. Only the single blast, as near as I can remember.

Q. And how long was that before the boats came together?

A. It was but a short time.

Q. Was it not that that first called your attention to the boats?

A. No, sir. I saw the Cayuga before. She was hid from my sight very shortly afterwards, when the disappearance was followed by the blast of the whistle.

Q. She was hid from your sight by what?

A. By the angle of the cabin work; it projects out some distance from the cabin itself.

87 Q. That would indicate, then, that the Watt must have been crossing the line of direction of the Cayuga just about the time you saw her?

A. Yes, sir.

Q. And that was so?

A. That was so.

Q. How nearly at right angles were the two boats at that time, when you first saw them; just before the Cayuga was hid from your sight? (F. J. W.)

A. Well, I should think they were not greatly off, but still the Watt inclining a little to the inside of the angle, running well past the Cayuga's bow.

Q. Don't you mean outside of the angle?

A. No, sir.

Q. Was the angle an obtuse angle toward the New York shore, or less than a right angle?

A. It was, to my opinion, less. I consider all the Cayuga had to do was to have slowed up, or worked off a little to the westward, to have given the ferry-boat time to get through.

Q. It was less than a right angle?

A. Yes, sir.

88 Q. Your view of the way to avoid the (F. J. W.) collision would be stopping, or else bearing out into the river?

A. Yes, sir.

Q. You did not observe the relative courses of the[se] two boats until the Watt was on a course crossing the line of direction of the Cayuga, or just before?

A. Not much, sir. As I said before, the Cayuga bore straight toward us, with her stem on. I had no reason to fasten my attention to any fact of the case.

Q. And the collision followed very shortly after?
A. Yes, sir.
Q. Within half a minute?
A. No, sir. I should think a little more than that, but still it made no impression on my mind; only I know it followed shortly after the whistle was blown.
Q. Did you notice opposite what street the collision was?
A. If my memory is correct, I should think somewhere in the neighborhood of Chambers street.

89 Q. You think as far down as that?
A. I should think it was.
Q. And about how far out in the river?
A. About a quarter out in the river.
Q. How many streets is Chambers street above Barclay?
A. About four, I think.
Q. You are not a boatman?
A. No, sir.
Q. What is your business?
Q. Inspector and gauger under the Government.
Q. Inspector and gauger of what?
A. Oils and whiskey; I have been some twenty-five years a resident there, and often up in the pilot-house myself.

90 JOHN DEWALD, a witness for libellants, being duly sworn, testified.

Examined by Mr. Fuller:

Q. What is your occupation?
A. Carman.
Q. You have heard the testimony about this collision. Were you on the Watt that day?
A. Yes, sir.
Q. State what you saw, what part of the boat you were, and when you first saw the Cayuga?
A. Well, I was about the middle part of the boat, just about where the wheels are, with my truck; as I got on the boat I went over to talk with a young fellow, and then I jumped on my truck; I think I looked across the river and saw the Cayuga.
Q. Could you see from your truck?
A. Yes, sir; she was pretty low, and my truck was pretty high, and I had on a pretty good load, and I sat on the top of it.
Q. You could see right over the cabin?
A. Yes, sir.

91 Q. You saw her on your left side?
A. Yes, sir; I noticed this boat coming down; I had a piece of paper in my hand, with my numbers marked down. I kind of nibbled them off, and, as I looked down, I heard a whistle, and I looked round and saw this Cayuga coming pretty close, and I said I should not wonder if she would buck us—that is what I said; with that I saw the machinery stopped.
Q. The machinery of what?
A. Of the Cayuga; with that I sat down this way; it was warm, and I was sweating; then she started off again, and came pretty close to us, and I saw the man in the pilot-house turning his wheel as fast as he could, and she came and bucked us; I had like to have fell off my truck; the horse came very near falling any way.

Q. The man at the wheel of the Cayuga was turning his wheel very fast?

A. Yes, sir; at the time she struck us.

Q. You saw the walking-beam stop?

A. Yes, sir.

92 Q. And then go on again?

A. Yes, sir; about a minute and half she stopped.

Cross-examined by Mr. Van Santvoord:

Q. Do you suppose the man in the pilot-house was moving the wheel that moved the rudder or the wheel that propelled the boat?

A. The wheel that steered the boat he was moving at that time.

WILLIAM KETCHUM, a witness for libellants, being duly sworn, testified.

Examined by Mr. Fuller:

Q. What is your occupation?

A. I was expressman then, now it is teamster.

Q. Did you see this collision?

A. I did.

Q. Where were you, and what did you see?

A. I was on the front of the boat.

Q. What boat?

A. The James Watt.

Q. State what you saw?

93 A. I saw the Cayuga coming down the river, and I thought there would be a collision, and after I got out of sight of the boat, round the wheel-house, I stood there till she ran into us.

Q. When you first saw the Cayuga, how was she heading?

A. Down the river.

Q. Toward the Watt?

A. Yes, sir.

Q. How far apart were they?

A. Well, I should suppose 300 yards, may be a little more.

Q. The Cayuga was heading down the river. How was the Watt heading? (F. J. W.)

A. Well, she was going across to New York.

Q. Down the river?

A. Yes, sir.

Q. Look at that diagram, and state how near that represents the positions of the boats; is that about the position they were when you saw them?

A. That is just about the position.

Q. How far apart do you think they were?

A. I should think about 300 yards, as near as I could tell.

Q. When they struck, what part of the Watt did she strike?

A. The back part of the Watt.

94 By the court:

Q. Where were you?

A. I was in the back part of the boat.

Q. Which side of the boat?

A. I was about middle-way of the boat.

Q. You saw her as she came into you?

A. Yes, sir.

Q. How did they come together?

A. Just about so—about that way. (Witness illustrates by placing the boats at a very obtuse angle, the Cayuga heading aft.) I cannot remember exactly, it is so long ago.

Cross-examined by Mr. Van Santvoord:

Q. Did you say you were on the forward part of the Watt when you first saw the Cayuga?

A. When I first saw the Cayuga.

Q. How soon after that did you go to the stern of the Watt?

A. Well, a very short time.

Q. You went to the stern?

A. Yes, sir.

Q. What did you go to the stern for?

A. Because I expected there would be a collision; I started and ran.

Q. You ran aft?

A. Yes, sir.

95 Q. Did you run aft to see it?

A. I ran aft to see whether there was a collision or not.

Q. And then by the time you got aft were they together?

A. No, sir; not quite.

Q. How close together?

A. I should suppose twelve or fourteen feet; may be more; may be twenty feet.

Q. From fourteen to twenty?

A. Somewhere thereabouts.

Q. How long is the Watt?

A. I don't know; I never heard tell nor never measured it.

Q. Did you run fast?

A. About as fast as I could.

Q. You ran as fast as you could from one end to the other.

A. Yes, sir.

Q. And, then, when you got to the other end of the boat the two boats were within fourteen to twenty feet?

A. Somewhere about that.

Q. And, then, the next thing they came together?

A. Yes, sir.

96 Q. Where were you then?

A. I was about middle-way of the end of the boat; that is, from the side which she struck to the other side; about midway.

Q. Amidships?

A. Yes, sir; I don't know what you call it.

Q. And how near to the stern of the Watt?

A. From twenty to twenty-five feet where I stood when she struck.

Q. Had you stopped running at the time when you saw her?

A. I did; I came to a stand-still.

Q. Did you run so fast from one end of the boat to see this collision to the other that it put you out of breath?

A. I don't know; I got my breath afterwards.

By the court:

Q. What first attracted your attention to the Cayuga?

97 A. Well, I think, Mr. Chamberlain stood right beside of me, and we were all looking at the Cayuga, and thought there would be a collision.

Q. When you first saw her how did she bear—how were the two boats? (Witness illustrates.)

Q. If she had come in a straight line from there where would she have struck you?

A. She would have struck us about the wheel-house, I should think, may be a little ahead of it.

Q. Did you hear the whistle?

A. Yes, sir.

Q. Was that before you started to run?

A. Before I started to run; yes, sir.

HARVEY H. BROWN, a witness for libellants, being duly sworn, testified.

Examined by Mr. Fuller:

Q. What is your occupation?

A. A collector and real-estate agent.

Q. Collector of what?

(F. J. W.)

A. A collector of claims.

Q. Did you see this collision?

A. I was on the boat at the time.

Q. What boat?

A. The Watt.

98 Q. What part?

A. The forward part.

Q. State what you saw.

A. I was standing on the forward part of the boat as we were crossing. When we got about three-quarters or two-thirds of the way across I saw the Cayuga coming down. Seemed to be coming directly forward. I remarked to a person standing beside me, "Why, that boat looks as if she were going to strike us;" and a little while after that she seemed to be continuing right on, and I felt the jar of the collision.

Q. Did the Cayuga change her course, or keep coming on the same course?

A. Seemed to be coming on the same.

Q. Did the Watt keep on the same course?

A. Yes, sir.

Q. How was the Watt heading; toward what shore, and what point of the shore?

A. Well, so as to come in at Barclay street, I suppose.

Q. How was the Cayuga heading?

A. Right down the stream.

Q. Toward the Jersey shore?

99 A. Somewhat toward the Jersey shore.

Q. How far apart were the Cayuga and Watt when you first saw the Cayuga?

A. I should judge between 300 and 400 yards.

ISAAC H. ALLING, a witness for libellants, being duly sworn, testified.

Examined by Mr. Fuller:

Q. What is your occupation?

A. Carman.

Q. Did you see this collision?

A. I did.

Q. Where were you?

A. On my cart.

Q. On the James Watt?

A. Yes, sir.
Q. What part of the boat?
A. Astern.
Q. State what you saw.
A. I was sitting talking to another carman, I don't know who he was, and I heard the whistle blow.
Q. What whistle?
A. The Watt's. I looked over and saw a steamer coming; I did not know what her name was.
100 Q. Which way was she heading—the steamer coming?
A. Down the river.
Q. Which way was the Watt heading?
A. From Hoboken to New York.
Q. Down the river?
A. Yes, sir.
Q. Which way was her head pointed, toward the New York or Jersey shore?
A. She was pointing about toward Courtlandt street.
Q. How far apart were the steamers when you first saw the Cayuga?
A. About 150 yards when I first saw it.
Q. Did the Cayuga keep the same course?
A. Yes, sir.
Q. Did the James Watt alter her course?
A. Not as I saw.
Q. Was the Watt ahead of the Cayuga all the time?
A. She was crossing her bow.
Q. She was ahead down the river?
A. Yes, sir.
Q. How far apart were the two boats?
A. About 150 yards.
Q. (Court.) Which side of the Cayuga did you see when you heard the whistle and saw the Cayuga?
101 A. I did not see no side; I saw the bow.
Q. Coming right stem on?
A. Yes, sir; I thought myself as she came on she would split us in two.

WILLIAM BROWN, a witness for libellants, being duly sworn, testified.

Examined by Mr. Fuller:

Q. What is your occupation?
A. Farmer, sir.
Q. Did you see this collision?
A. I did, sir.
Q. Where were you?
A. Astern of the boat.
Q. What boat?
A. The James Watt.
Q. What did you see?
A. I saw the Cayuga; I had my back to her; some one called my attention, and just as I turned she was right on me. The first thing I did was to get out of the way; I had to get out of the way to save myself.
Q. You were at the stern of the boat?
A. Yes, sir.
102 Q. How near was she when you first saw her?
A. She was right on; just striking.

Q. Show how they were.
A. This is the James Watt, and this the Cayuga. (Witness illustrates by forming an acute angle, the Cayuga aft.)

NATHAN HEYDECKER, a witness for libellants, being duly sworn, testified.

Examined by Mr. Fuller:

Q. What is your occupation?
A. I am a manufacturer.
Q. Did you see this collision?
A. Yes, sir.
Q. Where were you?
A. I was sitting in the cabin with some ladies.
Q. The cabin of the Watt?
A. Yes, sir.
Q. Which cabin; the forward or after cabin?
A. The forward. I was looking out of the window, and I
103 spoke to the ladies, "See how close that boat comes on;" and she said, "Yes." She was afraid, and was very nervous, and nearly fainted away. I said, "They will pass very nicely," and hardly had it out when she struck.
Q. How far apart were they when you first saw her?
A. I should think between 60 and 80 yards.
Q. Just state how they were heading; how they came together.
A. All I know about it, we were running right straight this way, and that other boat came just up this way. (Witness illustrates by forming an acute angle with the boats, the Cayuga heading aft.)
Q. (Court.) When you looked out of the window, which side of the Cayuga did you see?
A. She came up from the New York shore.
Q. (Court.) Which side of the boat did you see?
A. She came right up in front.
Adjourned till to-morrow, at 12 o'clock.

104 ELIJAH E. BROWN, a witness for libellants, being duly sworn, testified.

Examined by Mr. Fuller:

Q. What is your occupation?
A. Deck hand on the Hoboken Ferry.
Q. How long have you been in that employment?
A. About six years, off and on.
Q. Running between what slips?
A. Barclay street and Hoboken.
Q. Did you see a collision between the Watt and Cayuga?
A. Yes, sir.
Q. When?
A. In June last.
Q. Where were you?
A. On the ferry boat "Hoboken."
Q. What part of the Hoboken were you on?
A. In the pilot-house.
Q. At the wheel?
A. Yes, sir.
Q. Were you wheelsman?
A. Yes, sir.

Q. State what you saw.
A. We were coming out of the slip on the New York side, Barclay street, and the Cayuga was coming down the river on our port side, and the Watt on her starboard, as we were going to Hoboken; me
105 and the captain were talking, and saying that if the Cayuga did not alter her course she would strike the Watt; we were watching them, and the Cayuga did not alter her course or stop her engine, till, I should judge, she had struck the Watt.
Q. You did not see her stop her engine?
A. No, sir.
Q. Which way was the Cayuga heading?
A. I should judge about S. S. W.
Q. Toward what point on the Jersey shore?
A. Somewhere about the coal docks, or a little below it.
Q. Which way was the Watt heading?
A. S. S. E.
Q. Pointing toward what point of New York?
A. Somewhere about Courtlandt street.
Q. Above or below Barclay street?
A. Below.
Q. What was the tide?
A. Ebb.
Q. What is your custom in making the Barclay street slip on an ebb tide; to strike above or below it?
A. Generally strike below it.
106 Q. About how far apart were the Cayuga and Watt, when you first saw them?
A. I should judge about 3 blocks.
Q. How fast was the Watt going?
A. I should judge she was making about 10 knots.
Q. And the Cayuga?
A. I should judge may be 12.
Q. Do you know the Cayuga?
A. Yes, sir.
Q. What is she?
A. Tow-boat on the Hudson River.
Q. What is her size?
A. I suppose about one of the largest.
Q. And speed?
A. I believe classed among the fastest; I am not certain.
Q. Which side of the Cayuga was the Watt?
A. On the starboard side.

Cross-examined by Mr. Van Santvoord:

Q. You were below the place of collision?
A. No, sir; we were above.
Q. You had passed both boats, then?
A. Yes, sir.
Q. Which side did she pass?
107 A. On the port side of the Cayuga, & the starboard side of the Watt—went between the two boats.
Q. Were you on the New York side of the Cayuga?
A. No, sir.
Q. Where were you going from, and where to?
A. We were going on the starboard side of the Cayuga, going up?
Q. From what slip were you going?

A. From the New York slip.
Q. That is, you were bound from the New York slip?
A. Yes, sir.
Q. To where?
A. To Hoboken.
Q. Then you were going up the river?
A. Yes, sir.
Q. You say you were on the port side of the Cayuga, and the starboard side of the Watt?
A. The Cayuga was on our starboard side, and the Watt was on our port side.
Q. Then you passed between the two?
A. Yes, sir.
Q. How long was that before the collision?
108 A. May be 2 minutes.
Q. Did you see the boats come together?
A. Yes, sir.
Q. Did you hear any signals?
A. No, sir.
Q. From either boats?
A. From neither boats, sir.

By the court:

Q. Where were you when you first saw the Cayuga?
A. Our boat was, may be, four or five lengths from the Barclay street slip.
Q. Where was the Cayuga then?
A. Coming down the river.
Q. Heading towards you?
A. Not quite toward us; heading too much to the westward for that.
Q. How was she heading when you first saw her?
A. As near as I can judge, she did not (F. J. W.) alter her course at all—about S. S. W.
Q. Where was she towards you?
A. Starboard of us.
Q. How far from her did you pass?
A. About a block.
Q. When you passed her, how were you?
A. About the Pavonia Ferry.
109 Q. What street is that?
A. Chambers street.
Q. You passed across her bow, then?
A. Yes, sir.
Q. And passed about a block to the westward?
A. Yes, sir.
Q. Where was the Watt then?
A. May be a little below us on our port side, going down the river.
Q. On the outside of you?
A. Yes, sir.
Q. When you passed the Cayuga, the Watt was further down the river?
A. Farther down the river.
Q. And how far was the Watt from you, when you passed the Cayuga?
A. I should judge the Watt was about 2 blocks or a block and half to the westward of us.
Q. But farther down the river?

A. Yes, sir.

Q. How much farther down the river was she than the Cayuga at that time?

A. I should judge the Watt was heading about so. (Illustrating.)

Q. How many lengths?

110 A. Three or four.

Q. Three or four lengths of the Cayuga down the stream?

A. Yes, sir.

Q. When did you first think there was going to be a collision?

A. When the Cayuga passed our stern, the captain and I were talking about it, and said, "If the Cayuga did not alter her course, she would strike the Watt."

Q. Did you keep your eye on her?

A. Yes, sir; I was steering, and the captain was looking at them, and I turned my eye away for not over a second, and when I looked again, she had struck the Watt.

Q. How did they strike; how much of an angle did they strike at?

A. (Witness illustrates by placing the boats at right angles.)

Q. Bow on?

A. Bow on; yes, sir.

Q. Was she steering more towards the Watt's stern?

A. Yes, sir; she was steering right square head on the Watt;

111 if she had altered her course a point or a point and half she would have cleared the Watt.

By Mr. Fuller:

Q. What was the cause of the collision?

A. The carelessness, I believe.

Q. What would have avoided it?

A. By altering the course of the Cayuga or slowing her engine.

By the court:

Q. When they came together, how was the Watt heading?

A. About S. S. E.

Q. For what point?

A. For Cortlandt Street Ferry, I should judge.

Q. Made no change in her course?

A. No, sir.

JOHN L. BROWN, a witness for libellants, recalled.

Examined by Mr. Fuller:

Q. You said yesterday you passed between the dock and the Cayuga?

A. I thought we passed between the dock and the Cayuga, but I might have been mistaken in that; it is a long time ago.

Q. Are you still of that opinion?

112 A. Since he mentioned it, I think we did go between the two boats; I recollect looking around the stern, and seeing her coming, I think, around to the left. (Witness turned his body round to illustrate.)

By the court:

Q. Looked around to your left?

A. Yes, sir; saw the Cayuga on the starboard side.

Q. Do you mean the left?

A. I mean the right—the left hand on the right side.

Libellants rest.

113 *Respondents' testimony.*

ANDREW FOSTER, a witness for the respondents, being duly sworn, testified.

Examined by Van Santvoord:

Q. What is your business?
A. Piloting.
Q. Steamboat pilot?
A. Yes, sir.
Q. Are you a licensed pilot?
A. I am.
Q. Have you your licenses with you?
A. Yes, sir, (producing licenses.)
Q. What is the date of the first license?
A. 29th day of April, 1865.
Q. This is the second license dated June 9th, 1866?
A. Yes, sir.
Q. Were you pilot of the Cayuga in June, 1866?
A. I was.
Q. How long had you been a pilot before that?
A. I had been pilot about 25 years.
Q. On the North River?
A. Yes, sir.

114 Q. And were you pilot, and at the wheel at the time of this collision?

A. I was.
Q. What was the business of the Cayuga?
A. Towing from New York to Albany.
Q. At what dock was she before she came out? Had she been at Desbrosses street dock on the day of collision, and before it?
A. Yes, sir.
Q. What did she do there?
A. Took in water.
Q. At what time did she leave that dock?
A. About four o'clock.
Q. And where did she go after leaving it?
A. Went to Hubert street.
Q. Where is Hubert street in reference to Desbrosses street?
A. Some two or three blocks below, I think.
Q. What did she go to Hubert street for?
A. She went there to get a barge.
Q. For which you had an order on your list?
A. Yes, sir.
Q. How did you go there?
A. I went out in the river from Desbrosses street, and rounded to, and come toward the docks, and went into Hubert street.

115 Q. When you went into Hubert street (F. J. W.) how were you heading?

A. Heading up and on the docks.
Q. Heading up the river?
A. Yes, sir.
Q. Did you get the boat?
A. No, sir.
Q. How did that happen?

A. Well, the boat was jammed in some way, the boats blocking up the mouth of the slip, and she could not get out.

Q. How was the tide?

A. Ebb.

Q. When you found you could not get the boat, what did you do then?

A. Concluded to go round into the East River, and get what boats were there.

Q. How did you get off from Hubert street into the North River?

A. Headed her off and started her down.

Q. Down the river?

A. Yes, sir.

Q. Were there any vessels lying at Hubert street?

A. There were some vessels lying to an anchor a little distance below Hubert street.

116 Q. In rounding off did you go outside those?

A. Yes, sir.

Q. Then after you had rounded off, how did you head?

A. About straight down the river.

Q. How were you heading when you first saw the Watt?

A. Well, I was heading, pointing for the Battery, I guess.

Q. Down the river?

A. Yes, sir; about E. by S.

Q. Where was the Watt?

A. The first I discovered her was upon our starboard quarter, coming from Hoboken.

Q. And how far from you?

A. When I first discovered her, she might have been half way from the middle of the river to Hoboken.

Q. And how was she bearing in reference to you?

A. Well, she was bearing about down on to us, I should think, coming from Hoboken down on our quarter.

Q. Which quarter?

117 A. The starboard quarter.

Q. After that, what course did you keep?

A. I kept my course right along; did not alter it at all.

Q. And what course did she pursue?

A. Well, she kept on a straight course about, pointing down for us about all the time till she got within about two lengths of us, and then he started down along side of us, about in a line with me; he was going somewhat faster than we were.

Q. Go on and describe it?

A. When she was about two lengths off from us, I should judge, going faster than we were, and she got down so her stern was about in line with our stem, he hove over to starboard, & went right across the bow; when I saw he was going across, I stopped the Cayuga.

Q. How did you stop her—what bells did you ring?

A. I rang the bells to slow her and stop her; that is, I rang a slowing bell and a stopping bell?

Q. Those signals were obeyed?

A. Yes, sir.

Q. Then, what next?

118 A. The next we hit.

Q. What hit? What part of the Cayuga hit what part of the Watt?

A. Our stem hit, I should judge, 10 or 15 feet from her stern.

Q. Did it do any damage to the Cayuga?
A. Well, yes; knocked her stem round.
Q. Which way?
A. Knocked it off to port.
Q. And what did it do to the Watt?
A. Well, I don't know; some damage done there, we could not tell exactly what was done; the plank-sheer & piece of the rail.
(F. J. W.) Q. Did you back before she hit?
A. No, sir; the engine was not backed.
Q. How did that happen?
A. The blow came too quick.
Q. Before this bell was rung to slow and stop on the Cayuga, had the engine of the Cayuga been stopped before that?
A. Not since we left Hubert street. After we started up from there we did not stop her again until we stopped for the ferry-boat.
Q. Where were you bound to; where did you intend to go?
A. Intended to go round into the East River.
119 Q. To take up your tow?
A. Yes, sir.
Q. At what rate of speed?
A. Well, I should think we were going about 6 knots; we had a very low head of steam, I know; we generally carry a very low head of steam going such a short distance.
Q. Did you ever carry a full head of steam going round into the East River?
A. No, sir.
Q. Why not?
A. We don't want too much steam on when we are laying around picking up our boats and taking our tow; we have to blow off and it makes a terrible noise, and we can't hear one another talk, and make them understand what we want.
Q. About what point was the collision?
A. About abreast of Robinson street.
Q. And in what part of the river?
A. About in the middle of it.
Q. What do you suppose the ferry-boat meant to do when you saw her off your starboard quarter?
(Objected to.)
120 Q. What did it appear she was doing?
A. I calculated the course she was going was under our stern; to stop and let us go by.
Q. What would have been proper for her to have done under the circumstances of her approach towards you, she overtaking you?
A. The proper way would be to stop.
Q. And do what?
A. Go under our stern.
Q. At what rate of speed was the Watt going?
A. Well, I don't know; she was passing us pretty fast, as fast as a man could walk, I should judge, going by us.
Q. She was not much time then in passing you?
A. No, sir.
Q. Did you hear any signal on the Watt?
A. I did not.
Q. Had you any reason to suppose (F. J. W.) that she was going to cross your bow?
A. I had no idea she was going to cross our bow.

121 Cross-examined by Mr. Fuller:

Q. How far out in the river was the Watt when you first saw her—how far beyond you; what was the distance between the Watt and Cayuga when you first saw the Watt?

A. About half way between the middle of the river and Hoboken docks, I should judge.

Q. What is that distance—how many feet, yards, or rods?

A. I could not tell; I never measured it.

Q. Are you any judge of distances?

A. I can't tell you anything about the distance.

Q. Was it half a mile?

A. Yes, I should think it was more than that.

Q. When you first saw the Watt, how far was she from the Cayuga?

A. Well sir, I should say about half way from the center of the river to Hoboken dock, off on our starboard quarter.

Q. What distance from you?

A. I could not tell you, sir.

122 Q. 300 or 400 yards?

A. More than that.

Q. Where were you?

A. We were in the center of the river, about as near as I can judge.

Q. You say her duty was to pass under your stern; did you make a signal for her to pass under your stern?

A. No, sir; I did not.

Q. Was the position such then as made collision imminent; did it look as if there was going to be a collision?

A. No, sir; not to me.

Q. You did not stop your engine until you struck?

A. It was about stopped at the time she struck.

Q. Did you see the men in the wheel-house of the Watt?

A. I saw one man there.

Q. Did you see him move the wheel?

A. Well, I did not take notice in particular.

Q. You have sworn they hove the wheel to starboard?

A. When he went round our bow, he must have, to give it that sheer; she could not have gone there without.

123 Q. You did not see him move the wheel?

A. I did not see him turn the wheel, I judge from the sheer of the boat.

Q. When you were heading down the river, as you say, how was the Watt heading?

A. She was off on our starboard quarter heading in toward us.

Q. Which was inside—the New York side?

A. The Cayuga.

Q. Then the Watt was on you starboard side?

A. Yes, sir; on our starboard quarter.

Q. And she was in that position all the while until the collision?

A. No, sir.

Q. When was the position altered?

A. When she came within about twice the length of our boat, then she streightened down; going faster than we were, she gained on us.

Q. Up to the time you say she streightened, the Watt had been approaching you?

A. Yes, sir.

Q. Illustrate?

124 A. She came down on our quarter till within twice the length

of our boat, then she straightened with us and kept on till her stem came on a line with our stern, then she made a sheer in towards our bow.

Q. You say you were heading E. by S.?

A. Yes, sir; I believe I was.

Q. Then you said you were heading for the Battery?

A. About that; a little outside of Pier 1, if anything, W. of Pier 1.

Q. Does the Battery bear E. by S. from off Hubert street?

A. Well, yes, I believe it does.

Q. You state that you were going about 6 knots; what is the rate of speed at the best speed of the Cayuga?

A. Well, she probably would go 12 knots.

Q. And with an ebb tide, how much?

A. About that, I suppose.

Q. How much more with an ebb tide?

(F. J. W.)

A. Well, probably 2 or 3 miles more.

Q. About 15 miles with an ebb tide; that is the usual rate of the Cayuga?

A. Yes, sir.

125 Q. You are familiar with the course the ferry-boats take between Barclay street and Hoboken slip?

A. Well, yes, I am, I suppose, some.

Q. You knew the James Watt when you saw her?

A. Yes, sir.

Q. Knew she was a ferry-boat going from Hoboken to Barclay street?

A. I did not know where she was going; I knew she had been running there.

Q. She was pointing in that direction, as you thought?

A. Well, she might have been when she came out of her slip.

Q. You knew that was her business plying between Hoboken and New York?

A. Yes, sir.

Q. You say you knocked your stem off to port?

A. Yes, sir.

Q. How much of it?

A. Well, about 7 feet of it, I presume.

Q. Did it do any injury to your bow otherwise?

A. Well, it knocked her facing piece off her stem, as they call it; that is a piece about 8 inches wide and about 10 inches thick.

126 Q. Did it hit anything or break anything on your starboard bow?

A. No sir.

Q. Nothing but the stem?

A. Nothing but the stem.

Q. Who was with you at the wheel?

A. There was nobody there.

Q. You were alone at the wheel?

A. Yes, sir.

Q. Was anybody in the pilot-house with you?

A. No, sir.

Q. You have not answered one question that Mr. Van Santvoord put to you. I have got it down that you don't know the rate of speed that the Watt was going. Do you know?

A. No, sir; I know she was going faster than we were.

Q. You don't know what her rate of speed was?
A. No, sir.
Q. You know what your own rate of speed was?
A. We were going at that time at 6 knots.
Q. If you can tell one why cannot you tell the other?
127 A. Well, I said she was passing us about as fast as a man could walk, I should judge.
Q. Did you move your wheel?
A. No, sir; I did not alter my course at all.
Q. Did you move your wheel at the time you struck?
A. No, sir.
Q. Or just before you struck?
A. No, sir; I had nothing to move it for.

Re-direct:

Q. What would have been the effect of putting your helm *or* port, as the Watt was passing you off to starboard?
A. We would have run into her side.
Q. In order to have got away from her, which way would it have been necessary to have put your helm?
A. Starboard.
Q. After she sheered was there time to put the helm a-port?
A. No, sir.
Q. Then what could you have done to clear her that you did not do?
128 A. I could not have done anything as I know of.
Q. How soon did you apprehend that she was going to cross your bow?
A. When I saw her take a rank sheer then I calculated she was going across my bow, and then I rang the bells as quick as I could.
Q. (Court.) Why did you not port then and swing as far as you could?
A. It was so short a distance that I could not have got a sheer into her; it was so quick.

Re-cross:

Q. If the boat was under headway she would mind her helm?
A. Yes, sir; but she was right on top of us.
Q. You struck her 10 feet from the stern, you say?
A. Yes, sir; somewhere about that.
Q. Where would one turn of your wheel, one spoke, have put your stem then; would it not have turned it off 10 feet?
A. No, sir.
(F. J. W.) Q. How many spokes would it have taken to turn
129 the bow of your boat ten feet?
A. Two turns of the wheel I should think.
Q. Then every time you are steering the Cayuga, do I understand you to swear, that when you want to turn her 10 feet to the right, you turn your wheel twice around?
A. Yes, sir.

By Mr. Van Santvoord:

Q. What was the cause of the collision—to what was it owing?
A. I don't know as I can answer that exactly.
Q. Through whose fault did it happen, and what was the fault?
A. Well, I judge the fault was in the ferry-boat, by going across our bow, and not giving any signal to go there.

Q. Coming up from behind and passing you, and crossing your bow?
A. Yes, sir.

By the court:

(F. J. W.) Q. Do I understand you to say that you did not roll your wheel at all?
A. I did not alter my course.
Q. Answer my question.
A. I did not roll my wheel.
Q. When did you first suppose that you would strike her?
130 A. I did not suppose we would strike her at all.
Q. Why not?
A. I did not calculate she was going across my bow?
Q. You did not at any time suppose she would be struck?
A. I supposed she would when she was going across our bow.
Q. When she began to sheer?
A. Yes, sir; I had no idea that she was going across our bow; as soon as I saw she was I stopped the engine.

GEORGE A. HUYCK, a witness for the respondents, being duly sworn, testified.

Examined by Mr. Van Santvoord:

Q. What was your business in 1866?
A. I was mate of the Cayuga.
Q. Were you a boatman?
A. Yes, sir.
Q. How long have you been a boatman?
A. Well, I have been on the river between 18 *or* 19 years; but not steamboating all the time.
Q. How long steamboating?
A. 4 years.
Q. Did you see the collision?
131 A. I did. I did not see when they struck; I saw how they headed on to us.
Q. On what part of the Cayuga were you when you first saw the Watt?
A. On the starboard quarter.
Q. Aft?
A. Yes, sir; aft of the wheel.
Q. Where had the Cayuga come from?
A. She had come out from Watt street. We headed in for the barge and then came out. I think it was Watt street.
Q. Hubert street, was it not?
A. Yes, sir; it was Hubert street.
Q. Do you know what you went to Hubert street for?
A. Yes, sir; we went after a barge.
Q. How did you go into Hubert street?
A. We went in, and headed out again down the river.
Q. How was the tide?
A. Ebb.
Q. After you had been in Hubert street where did you go to?
A. The pilot started her down the North River for the East River
Q. Bound for where?
A. Bound for our dock where we pick up our tow.
132 Q. Where is that?

A. I believe it is Pier 1 where we generally fasten to.
Q. In the East River?
A. Yes, sir.
Q. How were you heading when you first saw the Watt?
A. We were heading down the river, as near as I could tell from where I sat.
Q. What part of the river?
A. Pretty near the middle, as near as I could make it.
Q. Where was the Watt?
A. She was off on our starboard quarter—away off to the westward.
Q. How was she headed in reference to your course?
A. She was heading on to us.
Q. Toward what part of you?
A. If she had kept her course she would (F. J. W.) have come in aft of our wheel.
Q. Did she keep that course?
A. She did until she got within 2 lengths of us.
Q. Then what did she do?
A. She strieghtened down the river with us.
133 Q. And what next?
A. I did not go forward to see what took place.
Q. Did you see the collision?
A. I did not.
Q. Did you see how the boat stood before the collision?
A. Well, no, sir, I did not. I did not go away from the place where I was. I remained there until after they struck.
Q. How long was it that they struck after you saw her heading towards you, aft your wheel—your paddle-boxes?
A. Well it might have been two or three minutes.
Q. Did you observe whether she changed her course?
A. I think I saw the man at the wheel heave it hard over,
Q. Did you hear any bells rung on the Cayuga?
A. Yes, sir.
Q. What bells?
A. I heard bells rung to slow and stop.
Q. Did you feel the jar of the collision after that?
134 A. I did, sir.
Q. How soon after that?
A. Very shortly.
Q. Do you know whether the engine of the Cayuga had been stopped before that?
A. It had not. After we came off from Hubert street, it had not been stopped still then.
Q. At what rate of speed was the Cayuga going?
A. Well, she could not have gone over 5 or 6 knots, because they don't generally have much steam going round in the East River.
Q. How fast was the Watt going?
A. She was going a good deal faster.
Q. Faster than the Cayuga?
A. Yes, sir; she passed. I did not see her again until I went forward again.
Q. You did go forward?
A. I did, sir, after the collision.
Q. Where was the Watt then?
A. She was off on port side.
Q. How was she heading?

A. Heading right for New York—right straight in.

135 Q. After they separated, you went on?

A. We went on to our docks to get our boats.

Q. Was there anybody with you aft?

A. Yes, sir; John McCann.

Q. Do you know whether he went forward?

A. He did.

Cross-examined by Mr. Fuller:

Q. Just illustrate with your hands the way that the Cayuga was going, and the way the Watt was going when you first saw them?

A. The Cayuga was going down the river in this direction, and the Watt coming down in this way, on to us, and going so fast that she would have to alter her course to clear us.

Q. You were standing aft?

A. Yes, sir.

Q. Your business was that of mate?

A. Yes, sir.

Q. Could you see forward?

A. From where I was on the Cayuga?

Q. Yes.

A. No, sir; the wheel-house covers me up, so that I can't see.

136 Q. If you could not see forward of the wheel-house, where was the Watt when you saw the man move the wheel?

A. He was off on our starboard quarter. I had a full view of him.

Q. You say you saw him off on your starboard quarter heave the wheel hard astarboard?

A. Yes, sir.

Q. Can you swear positively that you saw the man heave the wheel hard astarboard?

A. Yes, sir; I think I can.

Q. Can you swear positively?

A. I can.

Q. How many men were at the wheel?

A. I did not see but one.

Q. Then they must have been in line with you?

A. They were not until he shifted his wheel.

Q. If there had been two men at the wheel could you have seen them?

A. I don't know as I could.

Q. They were abreast of you?

(Witness illustrates.)

Q. You could see if there had been 2 men.

137 A. Sometimes you can; and sometimes one man will cover up the other.

Q. When you say he hove it hard astarboard, could you have seen two men if they had been there?

A. I don't know as I could.

Q. Which man did you see heave it over?

A. On the port side?

Q. Then if you were on the starboard quarter of the Cayuga, and a man at the wheel of the Watt, on the port side, and you could not have seen a second man if he had been there, you must have been right abreast.

A. He was heading right on to us. I did not see but one man.

Q. You say if there had been another man there, he must be covered up?

A. Well, very often, sir.

Q. Then I ask you if they must not have been directly in line, to cover him up?

(F. J. W.) A. I don't know but what they must.

Q. Then they must have been right abreast of you?

A. Well, they were; a little aft of me.

Q. If they were the slightest degree aft you could see both men?

138 A. I did not see but one.

Q. When you say you saw that man at the Watt's wheel heave that wheel hard astarboard, you having sworn that the Watt was a little astern of you, what would have been the effect upon the Watt—the heaving that wheel hard astarboard?

A. Why he would have kept clear of us by heaving it hard astarboard. He would have come right alongside of us.

Q. Which way would his bow have swung?

A. If he had swung to port he would have gone clear of us. I made a mistake.

Q. Then you are mistaken; they did not heave it hard astarboard, but hove it hard aport?

A. Yes, sir.

Q. You will swear he hove it hard aport?

A. I think so.

Q. You think so?

A. I saw him working the wheel any how.

Q. You don't know which way he worked it?

A. Of course, I thought—

139 Q. I ask you what you saw, and what you know?

A. That is all I know.

Q. Now I ask you, what he was doing with the wheel; what you saw him do?

A. Well he hove it starboard.

Q. Now I repeat my question, you have said starboard, and you have said port. Now if he had hove it starboard, what effect would it have had on the Watt. Where would it have brought the Watt's bows?

A. It would have brought the Watt's bows on to us, would it not?

Q. I ask you would it?

A. I think so.

Q. When you heave to starboard, which way does it bring the bows? To port, does it not?

Q. If she was on your starboard quarter, and he had hove hard astarboard, what would it have done to the Watt?

A. Well, I don't know.

Q. You have been a mate of a steamboat how long?

A. Only four years.

Q. Do you know which is the port side of a vessel?

140 A. I do; yes, sir.

Q. When you put your wheel to port, which way does the bow of your steamer turn?

A. It goes to the starboard, the contrary way, of course.

Q. Having sworn first to port, and then to starboard, I want you to tell me positively whether you saw that man move the wheel at all?

A. I did see him move the wheel.

Q. You are not certain which way he moved it?

A. I don't know positively.

Q. You said he hove it hard astarboard?

A. I judge he hove it that way so as to (F. J. W.) keep off us?

By the court:

Q. You noticed him rolling the wheel?
A. Yes, sir.
Q. Does it run fore and aft, or athwart ship?
A. I don't know.
Q. You saw it?
A. I think it ran athwart ship.

141 Q. How far did she run before she got out of your sight from the paddle-box, after she hove her wheel?
A. About a length, I think, or a little more.
Q. A length of what?
A. Of the Watt. I did not pay much attention then.

By Mr. Fuller:

Q. You said at one time the Watt was on your port side?
A. I did not say so, sir.
Q. Was she on your starboard quarter all the time?
A. All the while.
Q. You say the Cayuga had not stopped till then; when did it stop?
A. It appeared from where I was, that the stopping and collision was all at once.

By Mr. Van Santvoord:

Q. Did you observe that the Watt changed her course so as to bear off parallel to you, before she went out of sight?
A. No, sir.
Q. You inferred that she did, from the inferred fact that she was on a course to hit you, before she passed out of sight?

142 A. Yes, sir.

By the court:

Q. When she passed you out of sight, did you suppose there was any danger of collision?
A. No, sir; I thought she went so much faster she would go right around.
Q. She did not draw nearer to you after she hove her wheel, till her stern went out of sight behind the paddle-box?
A. No, sir. She was on about the same course.

143 JOHN MCCANN, a witness for respondents, being duly sworn, testified.

Examined by Mr. Van Santvoord:

Q. What has been your business?
A. Boatman, sir.
Q. On steamboats?
A. I have been four years before this on steamboats.
Q. Were you on the Cayuga at the time of this collision with the Watt?
A. Yes, sir.
Q. Do you know where the Cayuga had come from?
A. No, sir.
Q. What were you?
A. I was deck hand.
Q. Where had she come from?
A. Came from Desbrosses street first, and then went down after a barge at Hubert street; we went down but could not get the barge out,

and then we came out again, and went down by the Battery for our tow. (F. J. W.)

Q. Did you see the Watt before the collision?

A. Yes, sir.

Q. On what part of the Cayuga were you?

A. Aft of the wheel on the starboard side.

(F. J. W.) Q. How was the Cayuga heading at the time you first saw the Watt?

144 A. She looked from where we were sitting, to be heading straight down the river.

Q. Where was the Watt when you first saw her? (F. J. W.)

A. Over on the Hoboken or Jersey side.

Q. How did she bear to you?

A. Came right aft of our wheel; right along streight.

Q. Was she further up the river than you?

A. No, sir; she was coming right on to our quarter all the time.

Q. If she had continued the course on which she was when you first saw her, would she have hit you?

A. Yes, sir.

Q. Where?

A. I think she would have hit us aft, on the quarter.

Q. Did you observe any change of direction of the Watt after that?

A. Yes, sir.

Q. What was it?

A. Well, she came down, and when she was about twice or three times the length of our boat away from us, then she came straight along with us.

Q. Did she pass you?

A. Yes, sir.

145 Q. What more did you see?

A. When she passed us I ran forward, and just as I was going under the shaft, the bell rang to slow, and then she struck.

Q. Did you see her at the time she struck?

A. Yes, sir.

Q. How was she heading then?

A. In toward the New York shore.

Q. What took you forward?

(F. J. W.) A. I knew they were going to hit, and I ran forward.

Q. Did you run?

A. Yes, sir.

Q. And how far forward had you got when the boats struck?

A. I had not got further than the gangway door.

Q. Where is that?

A. I don't know how far from the stern.

Q. You mean the door through which you go outside of the deck?

A. Yes, sir,

Q. Then you were not out on the forward deck?

A. No, sir; I was in the door.

Q. In the door opening out of the forward deck?

A. I was standing in the door, and she kind of keeled over, and the door came right up against me, and when she straightened up,

146 the door went back.

Q. At what rate of speed was the Cayuga going?

A. I don't know, sir.

Q. At what rate of speed was the Watt going?

A. I don't know.

Q. Which was the faster?
A. The ferry-boat seemed to be the fastest, the way she went by us.
Q. You observed her at the time she was going by you?
A. Yes, sir.
Q. How far off from you was she?
A. A couple of lengths of our boat away from us.
Q. Did you hear any bell to stop, before the collision?
A. Yes, sir.
Q. Do you know whether the engine was stopped?
A. I don't know, sir; I was forward when the bell rang to stop.
Q. At the time of the collision you don't know whether it was stopped or not?
A. I know the bell rang to stop.
Q. Do you know whether the engine had been stopped at any time previous to that.
A. No, sir; not since the time we had come out from the barge.
147 Q. Was there no bell rung to stop until just before the collision?
A. No, sir.

Cross-examined by Mr. Fuller:

Q. Where were you when you first saw the Watt?
A. On the Cayuga's starboard quarter, aft the wheel.
Q. What were you doing there?
A. I was sitting there along with the mate?
Q. Then you could not see forward from where you sat?
A. No, sir.
Q. When you ran forward you stooped and went under the shaft. Did you see the boats when they came together? (F. J. W.)
A. Yes, sir.
Q. Just take your hands and illustrate the way the Cayuga was going, and the way the Watt was going; the position when they struck.
A. We were going down the river, and the ferry-boat came up like this; when she came near us she headed down the river.
Q. When they struck, how were the boats together?
A. The stem of the Cayuga came right up by her quarter aft. (Witness illustrates by placing the boats about at right angles.)
Q. You have said the Watt came down and then sheered across; did did you see the sheer?
148 A. Well, I saw her come up alongside of us.
Q. Did you see the sheer?
A. Yes, sir.
Q. Where were you?
A. I was aft of the wheel.
Q. Where was the boat then when she sheered across?
A. On the starboard side of us.
Q. Was she ahead of you?
A. No, sir.
Q. How could she sheer across?
A. When she sheered across the second time she was ahead; she sheered first up in the river and came alongside of us.
Q. Where were you when she first began to sheer; were you still sitting with the mate?
A. Yes, sir.
Q. Where was the Watt?
A. She was going right up alongside of us.
Q. Could you see the bow of the Watt?

A. Yes, sir.
Q. Was it ahead of you, or nearly so?
A. No, sir.
Q. Was not the big wheel-house between you and the Watt?
A. No, sir.
Q. Was she on your starboard side?
A. Yes, sir.
Q. Was she on your starboard side all the while?
149 A. Yes, sir; until she crossed our bow.
Q. All the time, from the time you first saw her till she struck you?
A. Yes, sir.
Q. She did not cross your bow entirely when she struck you?
A. No, sir.
Q. You say she was alongside of you, and going on parallel lines, about?
A. Yes, sir.
Q. When she first began to sheer toward New York, how far was the stern of the Watt below the paddle-box of the Cayuga?
A. Well, I guess it was up about even with the Cayuga's stem.
Q. I don't want what you guess.
A. It was up there.
Q. Was the paddle-box between you and the Cayuga's stern?
A. Yes, sir.
Q. Could you see through that?
A. She was not so close as that to us.
Q. How near was she?
A. A couple of lengths out from us, in the river.
Q. On your starboard hand?
A. Yes, sir.
Q. When you first saw her sheer across your bows, then you started to run?
150 A. Yes, sir.
Q. How is the Cayuga built; is there a cabin to her?
A. Yes, sir.
Q. You went through the cabin?
A. The cabin is down below. There is a gangway something like the ferry-boat.
Q. Could you see till you got to the front?
A. No, sir.
Q. You don't know what was happening till you got to the gangway door from the time you started?
A. No, sir.
Q. When you got to the gangway door, how was the Watt?
A. Half way across our bow. Our stem was aft of her wheel.
Q. How was she heading; right straight across?
A. Yes, sir; right straight across?
Q. That is the position you found her in when you got there?
A. Yes, sir.
Q. With your stem aft of the Watt's paddle-box?
A. Yes, sir.
Q. What was the exact position of the Watt when you struck?
151 A. She was drawing in toward our bow all the while.
Q. How much of the Watt was visible to you then; how much could you see?
A. I could see near all.

Q. Could you see her stem?
A. I could not see her stem, exactly; but I could see all the length of the cabin.
Q. You could see from forward of the wheel-house of the Watt?
A. Yes, sir.
Q. When you started to go, how far apart do you say they were?
A. Well, they were about two lengths of themselves.
Q. How long is the Cayuga?
A. I don't know.
Q. About two lengths of the Watt apart?
(F. J. W.) A. No, of the Cayuga.
Q. Do you know how long the Cayuga is?
A. No, sir.
Q. Is she a hundred yards?
A. I don't know how long she is.
Q. Have you no idea of distance?
A. No, sir.

By the court:

Q. You say you heard your bell ring?
152 A. Yes, sir.
Q. Where were you?
A. Going under the shaft.
Q. Did the mate start to run with you?
A. No, sir; he did not come.
Q. What was it started you?
A. Well, I expected they were going to hit, and I ran forward. It was my place to be forward. I worked on the forward deck.

Re-cross:

Q. Was there anybody forward?
A. No, sir; not as I know.
Q. It was your place to be forward?
A. Yes, sir; I worked on the forward deck.
Q. There was nobody there forward looking out when you went there?
A. No, sir; not as I know of.

ORLANDO B. TITUS, a witness for respondents, being duly sworn, testified.

Examined by Mr. Van Santvoord:

Q. Were you captain of the Cayuga last year?
A. Yes, sir.
Q. How long have you been in command of her?
153 A. Ever since 1854. The spring of 1854 I went on board of her.
Q. What was her business?
A. Towing between Albany and New York.
Q. Were you on board at the time of this collision?
A. Yes, sir.
Q. Where had she come from?
A. She came out of Desbrosses street and rounded to, and went to Hubert street to pick up a barge.
Q. Do you recollect whether any vessels lay off there?
A. Yes, sir; two or three schooners lay there waiting for the Kingston tow, to be towed to Kingston—about a quarter way out of the river.

Q. Going to Hubert street, how did the Cayuga go?

A. We rounded to round the stern of those vessels, and headed up the river parallel with the docks.

Q. Did you pick up the boat?

A. No, sir; we could not get it.

Q. Then what did you do?

A. We went outside the head of those schooners, and so headed down the river again.

Q. Did you see the Watt before the collision?

154 A. No, sir.

Q. When did you first see her?

A. She was going across our bow when I first saw her. The bell rang to slow the steamboat, and my attention was called. I looked forward and saw the Watt going across our bow. I heard the bell ring to stop her, and it was not half a second, probably, after the bell rang until they hit.

Q. Before the stopping of the engine, just before the collision, had the engine been stopped?

A. No, sir.

Q. At any time after you came from Hubert street?

A. After we left Hubert street the engine wasn't stopped until she stopped for the collision.

Q. Would you have known if it had been stopped?

A. Yes, sir.

Q. How?

A. Well, I could have heard the bells ring. There was nobody to stop her but myself and the pilot, who was at the wheel. Nobody else has any authority to stop her.

155 Q. At what rate of speed were you going?

A. Probably we were going at five knots through the water.

Q. How much by the land?

A. Well, probably we were going the strength of the tide. If the tide ran three miles, we were going that much faster by the land. We carry a light head of steam going on to the slip, just enough to work her. We cannot open her very far. She has got to go slow. She shakes a good deal now when we open her.

Q. That is when you are running alone?

A. Yes, sir.

Q. How did it happen you did not see the Watt earlier?

A. Well, my attention was called aft.

Q. Where were you?

A. I was about amidship, on the hurricane deck—the after deck.

Cross-examined by Mr. Fuller:

Q. You state you were on the hurricane deck, aft. What were you doing there?

A. I was standing there. That is my business.

156 Q. Were you looking out of the stern?

A. I was looking out to the stern. We had a line out to pick up that boat, and some of the boys were hauling that line in. It was a yawl-boat attached to our stern.

Q. Some of your deck hands?

A. Yes, sir.

Q. You state you did not see the Watt before the collision. What was the position of the Watt when you saw her?

A. She was going right across our bows.

Q. How much of her was across your bows when you first saw her; where was the Watt's wheel-house?
A. It was about in range with our stem when I looked forward.
Q. You were heading right square for the wheel-house?
A. Yes, sir.
Q. What is the best rate of speed of the Cayuga?
A. I don't know as we ever tested it.
Q. What is a good rate of speed?
A. She will probably go eight or ten knots.
Q. Have you never driven her more than ten?
157 A. No, sir; she will go from New York to Albany on a flood-tide in twelve or thirteen hours without a tow, that is the best she ever did.

By the court:

Q. How did the two boats come together?
A. About at right angles; the Cayuga was going down the river, and the Watt ran across her bow.

By Mr. Van Santvoord:

Q. Where were you standing at the time you saw the Watt crossing your bow?
A. I was probably fifty feet from her stern post.

By Mr. Fuller:

Q. What is the length of the Cayuga?
A. 215 feet.

By Mr. Van Santvoord:

Then you looked at her?
A. Through the gangway, between the house and the engine.
Q. Which gangway?
A. On the port side.
Q. And what part of the Watt did you see?
A. Her wheel-house. Her wheel-house was about in range with our stem when I looked forward.

158 By Mr. Fuller:

Q. Then you must have seen it a little aft of midships?
A. Yes, sir; probably it was a second after I looked forward before I heard the collision.
Q. You said the Cayuga's wheel is small; how is it with the Watt?
A. I don't know; I never measured her wheel.
Q. Is it larger?
A. It ought to be larger; she has more power.
Q. What is your wheel?
A. Twenty-eight feet in diameter and fourteen feet face.

By Mr. Van Santvoord:

Q. When you saw the Watt through this gangway, did you see any part of her except her paddle-box?
A. That is all I saw of her.
Q. In the position you were, could you form any accurate idea of the angle at which the boats were heading when they came together?
A. The Cayuga was heading down the river, as near as I could judge, and the Watt was going across the river.
159 Q. Give the precise angle?
A. That I can't tell.

By the court:

Q. Did you hear any whistle?
A. No, sir, there was no whistle blown that I heard at all?

By Mr. Fuller:

Q. There was none blown by your boat?
A. No, sir; and none by the other boat, that I heard.

JOHN T. O'CONNOR, a witness for respondents, being duly sworn, testified:

Examined by Mr. Van Santvoord:

Q. Were you engineer on the Cayuga?
A. I was acting as assistant engineer.
Q. Who was the engineer?
A. Mr. Hoffman.
Q. Were you first engineer on some other boat?
A. Yes, sir.
Q. What boat?
A. The "Alida."
Q. You were acting as assistant engineer on this trip of the Cayuga?
160 A. Yes, sir.
Q. Do you know where the Cayuga came from?
A. Came from Desbrosses st. first.
Q. Where afterwards? (F. J. W.)
A. We rounded to, after we came out from Desbrosses street; what for I don't know; we stopped for something and started up again, and then we did not stop until we stopped for the ferry-boat.
Q. Did you know where you were going when you started up again?
A. We went off and rounded to, I suppose off the Battery after our tow
Q. What signals did you get from the pilot-house?
A. A bell to slow and to stop.
Q. Were those orders executed?
A. They were, sir.
Q. By whom?
A. By myself.
Q. Did know anything of the collision?
A. Well, when they rang to slow, I stepped outside of the engine-*house* [room] in the gangway.
161 Q. Which side?
A. On our port side, and the deck hands ran forward, saying there was going to be a collision with the ferry-boat; I looked through the forward gangway and saw the ferry-boat come across our bow—just saw the ferry-boat; I stepped back in the engine-room, expecting to get some bells very sudden, but I was disappointed; I only got one bell to stop; I got no bells to back; I heard the blow, felt the shock, and passed on.
Q. Did you not get a bell to slow before you got one to stop?
A. Yes, sir.
Q. Then you got two bells?
A. Yes, sir.
Q. But no bell to back?
A. No bell to back.
Q. Had the engine been stopped at any time before that after coming out from Hubert street?

A. Not after we rounded out—after we had started up after rounding out.

Q. What head of steam had you on?

A. Well, I could not tell exactly; I don't suppose more than
162 18 or 20 pounds; we don't carry a large head of steam.

Q. What is her full rate?

A. Twenty-five or thirty.

(F. J. W.) Q. What is she inspected for?

A. I believe she is inspected for thirty pounds. I am not sure, but I think it is for thirty pounds.

Q. What rate of speed was she making?

A. I should not judge she was going over six or seven miles an hour.

Q. Was she throttled?

A. Yes, sir; she was open about one-third.

Q. In going round to the East River on these boats, do you generally go with a full head of steam?

A. No, sir; we generally go with as low a head of steam as we can possibly; just have steam enough to do her work when she got there; not have to blow steam.

Q. You did not see the Watt at all?

A. I saw her from our port gangway just before striking.

Q. That is the only time?

A. That is the only time until after the collision.

163 Q. After the collision how was she heading?

A. Heading toward New York; that was after we were all clear.

Q. You did not see her before the collision at any time?

A. No, sir.

Q. Where were you?

A. In the engine-room.

By the court:

Q. You were in the engine-room when *when* the engine stopped the first time?

A. Yes, sir.

Q. And you got a signal to start?

A. Yes, sir.

Q. And then did you step out into the gangway?

A. After we started up I stepped out to the gangway and saw the Watt.

Q. They rounded down from Hubert street, and after you left Hubert street you got a bell to start your engine?

A. Yes, sir.

Q. What did you do then?

A. I stood at the gangway in the engine-room door.

Q. The engine going ahead?

A. Yes, sir.

164 Q. Then you said you saw the men running—the deck hands; and you supposed you would get a bell, you stepped right back?

A. Yes, sir.

Q. Were you in the gangway when the men passed you?

A. Yes, sir.

Q. That was before you got the bell?

A. Yes, sir.

Q. The moment you stepped back you got the bell?
A. Yes, sir.
Q. Did you step out there as quick as you started her from Hubert street?
A. I stepped into the engine-room and unhooked the engine.
Q. How long was it from the first time you started her from Hubert street, till you got this blow?
A. Well, sir, I suppose it was probably fifteen minutes.
Q. Then you had been standing fifteen minutes by your door before the men ran forward by you?
A. Yes, sir.
Q. And the engine going ahead?
165 A. The engine going ahead.

By Mr. Van Santvoord:

Q. And between the time she was started on leaving Hubert street, down to the time you got this bell to stop before the collision, was there any stoppage of the engine?
A. None at all.

By the court:

Q. And you estimate that time at fifteen minutes.
A. I suppose about fifteen minutes.
Q. When you stood in the gangway, who stood with you?
A. I stood all alone.
Q. Did you pay any attention to the swinging of the boat?
A. No, sir.
Q. Do you know what way she was heading after you started from Hubert street?
A. We were heading down the river for the Battery.
Q. Did you notice the round?
A. I noticed we went around.
Q. How far around had she got when you got the first order?
A. We were round head down the river; we had got far enough for that. (F. J. W.)

166 WILLIAM R. HOFFMAN, a witness for respondents, being duly sworn, testified.

Examined by Mr. Van Santvoord:

Q. What were you on the Cayuga?
A. Engineer.
Q. First engineer?
A. Yes, sir.
Q. Where were you?
A. I was standing on the port guard.
Q. Do you know where the Cayuga came from?
A. From Desbrosses street.
Q. Where did she go next?
A. To Hubert street.
Q. How did she come to Hubert street?
A. That I don't recollect, sir.
Q. After leaving Hubert street, where did she go to?
A. She started to go round the Battery.
Q. Were you on deck at the time she rounded to end down the river?
A. I was, sir.
Q. Did you see the Watt?

167 A. I did not.
Q. At any time?
A. Not till after the collision; I saw her after the collision?
Q. Did you hear any bells rung to the engineer?
A. I did *not*.
Q. What?
A. I heard the bells to slow and to stop.
Q. How long was that before the collision?
A. The bell to slow, before the collision, I should think was about half a minute.
Q. And to stop?
A. The one to stop was not over three or four seconds.
Q. Do you know whether those signals were obeyed by the engineer?
A. I do, sir.
Q. What is his name?
A. John Connors.
Q. Had the engine of the Cayuga been stopped before this, after leaving Hubert street?
A. No, sir.
168 Q. Had any bells been rung to slow or stop?
A. No, sir.
Q. Do you know what head of steam the Cayuga had on that time?
A. No, sir.
Q. Do you know what her rate of speed was?
A. I should judge it was about eight knots by the land.
Q. Do you know whether she had a full head of steam on, or whether it was cut off?
A. She did not have a full head of steam.
Q. You said you did not know what head she had on.
A. I did not know exactly; my orders were not to have a full head.
Q. How much had she on?
A. I should judge about twenty pounds.
Q. Do you know whether she was throttled?
A. Yes; I know she was throttled down.
Q. Do these boats ever go round to the East River with a full head of steam?
169 A. We never do with our boat, the Cayuga.
Q. Did you see the Watt any time?
A. After the collision I saw her.
Q. Where were you standing at that time?
A. I was standing on the forward deck.
Q. How long after the collision was it?
A. Well, I should judge it was about a minute, or half a minute; I could not say exactly.
Q. The boats were seperated?
A. They were.
Q. Had you started ahead?
A. I don't recollect.

By the court:

Q. Where were you?
A. On the port guard.
Q. What were you doing there?
A. I was standing, talking with the second pilot.
Q. Did you hear the bells ring when you started, at Hubert street.
A. No, sir; I don't recollect.

Q. Did you notice the course of your boat at all?
A. Nothing more than that she was headed down the river; I could not say she was headed directly down.
170 Q. How much of her turn had she made before the bell rang?
A. Headed down the river as near direct as I should judge.
Q. Got her turn made?
A. Yes, sir.
Q. Any more than that; just got her turn made?
A. Oh, yes; we had been on our way some time.

By Mr. Fuller:

Q. Were you standing aft or forward of the wheel-house?
A. I was standing aft of the wheel-house.

PETER E. POST, a witness for the respondents, being duly sworn, testified.

Examined by Mr. Van Santvoord:

Q. Were you a pilot on the Cayuga?
A. Yes, sir.
Q. In June last?
A. Yes, sir.
Q. And at the time of this collision?
A. Yes, sir.
Q. Do you know where the Cayuga had come from?
171 A. We came from Desbrosses street.
Q. Where did you go to?
A. We went down round to Hubert street.
Q. How did you do that?
A. We went there after a barge or boat; a barge, I think.
Q. How was the tide?
A. Ebb tide.
Q. How did you come to?
A. We rounded to, and came head up.
Q. Did you get the barge?
A. No, sir.
Q. Then what did you do?
A. Then we started down the river, rounded to, and went head down for the Battery.
Q. To go down into the East River?
A. Yes, sir.
Q. Did you see the Watt?
A. I saw her about the time she hit?
Q. Did not see her before that?
A. No, sir.
Q. Where were you?
A. I was on the port guard, aft, right off her engine-room.
Q. How long had you been standing there?
172 A. Well, a very short time; it was not very long.
Q. At what rate of speed was the Cayuga going?
A. Well, I should think six or seven knots.
Q. Is that through the water, or by the land?
A. I should think going by the land, about six or seven knots.
Q. Did you hear any bells rung on the Cayuga?
A. There was no bells rung from the time we left Hubert street, till just before the collision.
Q. What bells were rung just before the collision?

A. To slow and stop.
Q. You heard those?
A. I heard those.
Q. Do you know whether the engine had been stopped after leaving Hubert street before that?
A. It had not.
Q. What first called your attention to the Watt?
A. The slow bell started me to look through her gangway, and
173 I saw the Watt then; and then the next bell was to stop, and I ran for forward, and before I could get forward, she hit.
Q. What gangway did you look through?
A. The port gangway.
Q. The port gangway on what deck?
A. The lower deck.
Q. The main deck?
A. Yes, sir.
Q. Is that the gangway between the machinery and the paddle-box?
A. Yes, sir; the water-wheel.
Q. About where was the place of the collision?
A. It was about opposite Robinson street.
Q. Did you hear any signals?
A. No, sir; there were no signals.
Q. When you first saw her, did you see her through this gangway?
A. Yes, sir.
Q. Well, what part of her did you see?
A. Well, I should say about half of the boat.
Q. Did you see her wheel-box?
174 A. I could see just about half of them; about half of the ferry-boat.
Q. Did you see her before she hit?
A. Well, that was about the time she (F. J. W.) hit, that I saw her; a little before.
Q. How were you heading at that time?
A. We were headed about straight down the river.
Q. How was she headed?
A. She was headed across.
Q. In the position you were, could you tell at what angle they struck?
A. I think I could tell pretty near how we hit, and how she was when I saw her.
Q. How was she headed?
A. We headed down the river, and when I saw her, the ferry-boat was going across our bow. (Witness illustrates by placing the boats not quite at right angles.)

175 Cross-examined by Mr. Fuller:

Q. You are the pilot of the Cayuga?
A. I am one of the pilots.
Q. How many spokes of the wheel would you have to turn to vary the course in porting your vessel ten feet to the right, the length of the vessel?
A. That depends on how close you are.
Q. Running the length of your vessel, how many spokes would you have to use?
A. I should have to use a great many. I would have to turn a turn or two; it takes a good piece to turn those vessels; they are not like the ferry-boats.

Q. What is the length of the Cayuga?
A. I never measured it.
Q. We will say 100 yards—take that distance; you can measure that with your eye.
A. Yes.
Q. How many spokes of your wheel would you have to turn to change the direction of your boat ten feet?
A. In how long a time?
Q. Going at the rate you said; seven knots an hour, 100 yards?
176 A. Well, it would take a turn of the wheel, certain; them tow-boats don't steer very quick, and in a shorter distance it would take more.
Q. How many turns of your wheel does it take to make one point of variation in the direction of your bow?
A. We don't steer by points.
Question repeated.
A. I don't understand.
Q. We will take 100 yards for distance; we will take seven knots for rate of speed; how many turns of your wheel will it take to change the direction of your boat one point, by the compass?
A. Well, am I to guess at that, or swear positively?
Q. (Court.) Give your best judgment—how many turns?
A. It will take one turn, I think, of the wheel.
Q. (Mr. Fuller.) It takes a whole turn of the wheel for a point?
A. Yes, sir, a short distance.
Q. 100 yards.
A. It might not take so much.
Q. How many pilots does the Cayuga carry?
177 A. Two.
Q. Are they both in the wheel-house, generally?
A. Well, sometimes they are.
Q. Are they required to be there when they are navigating the river?
A. No, sir; they stand six hours watch.
Q. When you are running in New York harbor, among the shipping, don't you generally have both pilots in the wheel-house?
A. No, sir.

ANDREW FOSTER, a witness for respondents, (F. J. W.) recalled and testified.

Examined by Mr. Van Santvoord:

Q. Did you see a Hoboken ferry-boat pass up, about the time of this collision?
A. Yes, sir.
Q. Where did she pass you?
A. On our port side.
Q. And how did she clear you?
A. She went under our stern.
Q. Did any boat pass between you and the Watt?
A. No, sir.
178 Q. About the time of the collision?
A. No, sir, she could not have got there; there was no way without getting afoul of the ferry-boat.
Q. But one did pass between you and New York?
A. Yes, sir.

Cross-examined by Mr. Fuller:

Q. When the slack is gathered in the chain on your wheel, can't your boat turn on her center; can't she turn clear round in her length?

A. Not in her length.

Q. When your wheel is hard over can you go clear round in her length?

A. No, sir.

Q. How many lengths?

A. It will take seven or eight lengths.

Q. These large tow-boats turn in their own length?

A. No, sir; not in a boat of that length.

Re-direct:

Q. When you begin to turn your wheel how far is it necessary to turn it before the rope begins to tell on the rudder?

179 A. Well, it would take half a turn of the wheel before the rudder would take any hold; we had a very small drum to our wheel.

Re-cross-examination:

Q. It will depend on whether your chain is slack or not?

A. No, sir.

Q. Did you use a chain or rope?

A. Chain.

Q. When your chain is taut, a very little turns the direction of your boat?

A. No, sir. It will take half a turn to make her feel it at all; it will take two turns of the wheel, easy enough, to sheer her ten feet.

Q. In what length?

A. The length of the boat.

Q. Do you mean two turns or two spokes?

A. Two turns of the wheel.

WILLIAM W. BETTS, a witness for respondents, being duly sworn, testified.

Examined by Mr. Van Santvoord:

Q. What is your business?

A. Boating.

180 Q. Are you master of a steamboat?

A. Yes, sir.

Q. What is the name?

A. The Champion.

Q. What is she?

A. Tow-boat round the harbor.

Q. How long have you been master of a steamboat?

A. Five or six years; I could not tell exactly now.

Q. Have you been a pilot?

A. Never on a steamboat.

Q. Have you been a pilot on sailing craft?

A. Yes, sir.

Q. Did you see this collision between the Watt and Cayuga in June last?

A. Yes, sir.

(F. J. W.) Q. Where were you?

A. I was on one of the Desbrosses street ferry-boats, going over to Jersey City.

Q. From New York to Jersey City?

A. Yes, sir.
Q. What part of the river was the collision?
A. I should think it was about the middle of the river.
Q. When did you first see these boats?
181 A. Well, I could not say; after we came out from the dock.
Q. After you came out from the dock you saw the boats?
A. I saw the Cayuga first; my attention was attracted to the Cayuga.
(F. J. W.) Q. Then did you see the other boat too?
A. Shortly after I saw the ferry-boat.
Q. Can you describe what you saw?
A. Well, I saw the Cayuga going down the river.
Q. How heading?
A. Heading right down the river, and shortly after that I saw the ferry-boat coming down right off to the westward of the Cayuga.
Q. Coming down, or going down?
A. Going down.
Q. They were below you?
A. They were below me, and I supposed the ferry-boat was coming between the Cayuga & the ferry-boat I was on. Instead of that, she seemed to continue on her course down the river, and then I began to look more serious at them, supposing there must some accident occur; thinking, if the ferry-boat continued on the course, there must be
182 a collision; and shortly after I saw the Cayuga stop, and the ferry-boat go across her bow, with the end of her gangway cut off.
Q. Then, before the collision, you saw the Watt passing down by the Cayuga from a point higher up?
A. Yes, sir. The Watt was to the westward of the Cayuga, and shut in by her paddle-box. I thought she must have calculated to get across the Cayuga's bow. The first intimation I had in my mind was, that *he* was going that way.
Q. Before she passed the Cayuga? Did she pass off the starboard side of the Cayuga?
A. She was to the starboard side of the Cayuga all the time.
Q. Before she passed down by the Cayuga, how did you suppose she intended to pass the Cayuga?
A. Well, if it had been myself, I should have gone under the Cayuga's stern.
Q. What would have been the proper way to have done it in the position they were when you saw them?
A. I should have gone under the Cayuga's stern.
183 Q. That she did not do; she passed down from above, and then crossed the bow, that you say?
A. Yes, sir.
Q. And how long after you saw her passing down, off the Cayuga's starboard side, did this collision happen?
A. Well, now, I could not say.
Q. Was it a long or short time?
A. It might have been a minute; it might have been half a minute. I never thought of the case from that time till now.
Q. Did you observe which boat was going the fastest?
A. Well, the ferry-boat appeared to be going the fastest.
Q. How wide apart were they when the Watt was passing the Cayuga?
A. I could not see how far. I was off above them, a ways off to the eastward.
Q. According to your best judgement?

A. They might have been 4 or 500 yards apart.
Q. You think as far as that?
A. They might have been. I could not say.
184 Q. That is, according to your best judgment?
A. They must have been more than the length of the Cayuga off; perhaps not over 300 feet.

Cross-examined by Mr. Fuller:

Q. Which way was your course from Desbrosses street; what ferry did you run to on the Jersey side?
A. They were running to the regular landing.
Q. Where is that?
A. It is above the Cunard pier.
Q. Down the river?
A. Yes, sir.
Q. The Jersey City Ferry?
A. Yes, sir; the regular Jersey City Ferry.
Q. How far above these boats were you at the time of this collision?
A. We were quite a little distance above them.
Q. A quarter of a *a* mile?
A. We were not half of that.
Q. An eighth of a mile?
A. Not more than that.
Q. Was the Cayuga swinging round when you first observed
185 her rounding to?
A. She was heading pretty well down the river when I first observed her.
Q. Did she change her course from the time you first saw her till the collision, apparently, to you?
A. Very little.
Q. Which way did she change it?
A. I don't know if she changed it any. I did not notice that they were changing her course at all.
Q. You think she kept on the same track?
A. Yes, sir.
Q. When you first saw the Watt what way was she heading?
A. She was heading down the river.
Q. (Court.) Both below you when you first saw them?
A. Yes, sir.

By Mrs. Fuller:

Q. When you saw the Watt, opposite what street was she?
A. That I could not say.
Q. About?
A. All that I could say, we were below Desbrosses street. I did not notice anything about the street.
186 Q. How far were you below Desbrosses st.?
A. After we had gone off of the slip a short distance I did not notice that in particular.
Q. How many blocks?
A. I suppose it might have been one block, and it might have been three. I would not say positively about that.
Q. Which way was the Watt heading? toward what street in New York, apparently, when you saw her first?
A. When I first saw the Watt she appeared to be heading down the river.
Q. The same way as the Cayuga?

A. The same way.

Q. Where would she have struck if she had kept going on the course you saw her?

A. She would have struck Governor's Island more than anywhere else.

Q. Did you see the Watt change her course?

A. No, sir; I did not see her change her course not until she came across the Cayuga's bow. The Cayuga shut her off out of my sight.

Q. That was after the collision?

A. Yes, sir.

187 By the court:

Q. Which did you see first?

A. I saw the Cayuga first.

A. And she was then heading straight down the river, parallel with the New York piers?

A. Appeared to be.

Q. How long after that did you see the Watt?

A. It was a very short time, a casual glance of the eye. I was looking down the river after we came out of the slip, and the first thing I observed was the Cayuga passing down, when I saw the Watt farther off to the westward.

Q. How far off to the westward was she more than the Cayuga?

A. I should think a length and half of the Cayuga.

Q. To the west of the Cayuga?

A. Yes, sir.

Q. How did she appear to be going?

A. Appear to be going down the river?

Q. Did you think there would be any collision?

A. Not until I saw the Watt show her engine, and come under
188 the Cayuga's stern. My idea was, that the pilot would see that it would be a long journey.

Q. Which was farthest down the river? You saw the Cayuga, and then your eye caught the Watt?

A. The Cayuga.

Q. When did you first suppose there was going to be a collision?

A. As soon as I saw the Watt shoot by the Cayuga's wheel-house—her paddle-box wheel.

Q. How was the Cayuga heading when the collision happened?

A. Down the river.

Q. Can you state how the 2 vessels came together; what kind of an angle they made?

A. Well, I could not. I could not say the exact position the ferry-boat was in. The Cayuga I saw, but the ferry-boat was shut off from my view by being the other side of the Cayuga.

By Mr. Fuller:

Q. Then you were nearer the New York shore?

A. We were nearer the New York shore than the Cayuga was.

189 Q. (Showing diagram to witness.) There is Desbrosses street, and you were out here; and the Cayuga, you say, was farther down the river. Were you inside of the Cayuga, between the Cayuga & the New York shore?

A. (Witness illustrates.) Coming out of the ferry, I cast my eye down the river. (Witness marks on diagram the positions of the several boats.) The Cayuga was not a length further down than the Watt when

I first saw her. If the Watt had changed her position at all, she would have come under the Cayuga's stern. When they got down further the Cayuga hid the Watt from view, which makes me know the Watt was going the fastest.

Q. Are you a licensed pilot?

A. No, sir.

Q Did you know anything about the rules and regulations of pilots?

A. I have read them over.

Q. Do you know what the fifth position is?

A. I could not name over any of them.

190 Q. (Showing Pilot Regulations to witness.) There are the different situations. There is "A" going one way, and "B" another. When they are the distance apart that you say the Cayuga and Watt were, what is the duty of "A?"

A. It is the duty of the boat that is going the fastest to give the other boat the right of way.

Q. Where do you find that?

A. I don't find it there. I never read that over.

Q. You don't know what the duty of "A" is, or "B" in that situation, when they are as near together as the Cayuga and Watt?

A. I don't know as I could give a direct answer. I would know what my duty would be if I was steering the vessel.

Q. (Court.) The question is, what is the duty of the right-hand vessel if they are coming in that position?

A. Well, I don't know as I could give you a correct answer; no.

Testimony closed.

191 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Thursday, the 23d day of May, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable Charles L. Benedict, district judge.

THE HOBOKEN LAND AND IMPROVEMENT COMPANY
vs.
THE STEAM-TUG "CAYUGA," &C.

This cause, having been heard upon the pleadings and proofs, and signed and submitted on briefs by the advocates for the respective parties, and due deliberation being had in the premises:

Now, on motion of Abbett & Fuller, esqs., proctors for libellants, it is ordered, adjudged, and decreed by the court, that the libellants recover in this action against The Steam-tug "Cayuga," her engines, &c., the damages by them sustained by reason of the collision in the pleadings mentioned, and that it be *refered* to one of the commissioners of this court, to ascertain and compute the amount of such damages, and report thereon to this court with all convenient speed.

CHARLES L. BENEDICT.

192 (Indorsed:) Vol.——, No.——. United States district court for the eastern district of New York. The Hoboken Land and Improvement Company vs. The Steam-tug "Cayuga," &c. Interlocutory decree and order of reference. Abbett & Fuller, proctors for libellants. Filed and entered the 23d day of May, 1867.

193 U. S. district court, eastern district of New York.

THE HOBOKEN LAND AND IMPROVEMENT COMPANY *vs.* THE STEAMBOAT "CAYUGA," &C. } Reference to ascertain damages.

1867, JULY 9.—Reference proceeded with. Mess. Abbett & Fuller for libell'ts; Mr. Van Santvoord for cl'm'ts.

Evidence for libell'ts.

JAMES MILLER sworn and examined:

I am a ship-carpenter since 1852. I know the James Watt; repaired her last June after collision with the Cayuga, under superintendance of Mr. Palmer, at Hoboken. The James Watt was injured substantially as follows: The guard was torn off from the cabin bulk-head clear around on the port side to the second stanchion from the knees on the starboard side. From where the guard was torn off all the way round we had to put new beams in. Think there was about three new beams right inside of cabin, and then from there all the way round to the big beam that goes across where the fantail is. We put new lining under the guard, new plank-shear, new facing, cause that was all
194 carried away. Everything that we put new was to replace what had been all carried away. I put no repairs on the boat except such as were necessary at the time she came into my hands, and none except such as were made necessary by the injury caused by the collision. Everything I put on was necessary to restore the boat in the same condition in which it was before. I put nothing on except what was absolutely indispensable to make the boat as good as she was before. I don't think we did, because we had orders to hurry the job through, because they wanted the boat, and we did so. We had to have new stanchions—they were all carried away—new rail, new deck plank, new sheathing and iron round the stern; that is all. The stern was all gone, clean sweep, when she came into my hands; that is, the deck stern.

Cross-examined:

At this time I was in the employ of the libellants, at work in their yard at Hoboken. That yard is foot of 2d street, Hoboken, above ferry slip. No memorandum of day I first went aboard of her; don't keep memorandums of that kind. She laid at pier above ferry, right above Christopher-st. slip, on Hoboken side. That was the evening
195 after the collision happened. Saw her from the pier; not aboard of her. Went to work next morning, I think, aboard of her. When I first examined her there were beams under the guard that were broken on the port side. I did not count the number of beams that were broken. I think there were more than seven beams broken under the guard on the port side, but I didn't count them. There are two timbers that run along the outside of the guard on the end of the beams, a wearing piece or fender, and a facing that goes on the end of the beam, the wearing piece being outside of the facings. The bucking piece is the solid timber on the end of the boat. That is supported by fantail-beams running from a heavy cross timber, into which they are morticed. These fantails run right through the bucking piece, through which they are *tenanted*. One end of fantail is in the big beam, into which they

are mortiсed. The other end runs through the bucking piece. This big timber, into which the fantails are mortised, is about seven feet from the end of the hull.

The facing piece spoken of was about 9½ inches wide, and three inches thick. When the boat first came into my hands that wearing piece was knocked off. The bucking piece was all gone when I first saw it.

196 The butting piece was torn out of some of these fantail beams; some of the ends were twisted up. Butting piece and bucking piece are the same. We did not scarf the beams under the guards at all. You can't scarf them. The difficulty in scarfing them so as to make them as strong as before, is that a scarf is never as strong as to lap them. The difference between scarfing & lapping is, in lapping it you lap one on to the other full thickness; in scarfing you cut half out of each one, so that the two united are the thickness of the original. All the broken beams, except the fantails, were repaired by lapping. Didn't put in new beams except the fantails. Put fantails in all new, and a new bucking piece.

Q. Didn't you put on a new deck on the starboard side of boat, aft the beam, into which the fantails are mortised?

A. Well, I don't think we did. I'll tell you why. Because I don't call it a new deck unless it's all new. We only put them just far enough to lap the buts.

197 Q. Didn't you put on a new deck across the boat as far forward as the most forward breakage on the port side, and then a new sheathing over that, or how was that?

A. We did not; not across the boat; not as far forward.

Q. How far forward from the end of the boat was a new deck & new sheathing put on?

A. The new deck was put on all the way across, about seven feet from the hull stern, about as far the fantail beams. We put new sheathing on as far as we had to take it up to put new deck plank in. A little piece of new railing about seven feet long was put upon the starboard side of the boat; might be two feet more. 'Twas a very short piece; might have been 10 or 12 feet long. 'Twas a good while ago. Oak timber was used in making those repairs for facing, wearing piece, plank-shears, and lining. The deck plank was white pine. No deck plank but of white pine was put on. Don't know, and have no idea of quantity of white pine used for this.

198 Q. How many feet of white pine would be required to make a new deck from the end of the boat to the beam, into which the fantails were mortised?

A. Don't know. Couldn't tell anything about it.

Q. What was the material of which the sheathing on the deck was made?

A. I can't tell.

The deck plank was 2½ inches thick, the sheathing from ⅞ of an inch to 1¼ inches we put down; but I can't say what the thickness was on her deck. I was employed at so much a day; superintended this work; laid it all out; had charge of the work; was ship carpenter. I am employed there every day. Couldn't tell how many days I was on this boat. I suppose it was about two weeks, or a little more, as far as I can recollect, because I am off of one job on to another, and can't say how long it took. No other repairs were going on in the yard at the time. I was on this job alone from the time it was commenced till it was completed. I got $3 50 per day then. Couldn't say how many men we had on this job. I don't keep the time. The other

men employed on this work were ship carpenters. Some of them
199 got higher wages than I, because we got other men from N. Y., whose wages were higher. Couldn't say how much higher. Wages either $4 00 or $4 50. Couldn't say. I had nothing to do with hiring men. Generally know what the run of wages is in N. Y. I have been ship-carpenter since 1852, helping to build & repair boats ever since. Have helped build ferry-boats.

Q. Which was the larger part of this job, repairing the side of the boat where the guard timbers are broken, or the putting on the new butting piece & fantail.

A. It was all one job.

Q. (Repeated.)

It is all one job, & I can't divide it.

Re-direct:

Q. Did you answer in reply to a question from Mr. Van Santvoord that the beams were broken all the way round?

(Objected to. Q. withdrawn.)

Q. How far were the beams broken?

A. Some of them was broke two feet from the guard of the boat, and some of them right on the hull; some of them just the ends knocked off about 12 or 15 inches. They were broke from the cabin bulkhead
200 on the port side around to about the 2d stanchion on the starboard side. I don't know how many were broken; didn't count them; could scarf beams that were broken off close to the hull, but 'twould'nt have made a good job, nor have made it as strong as before; 'twould have been a good deal more labor, & more money. You can't scarf a beam & make it as strong as before. I had charge of this work under the superintendence of Mr. Palmer.

JAMES MILLER.

Subscribed & sworn to before this 9th day of July, 1867.
SAMUEL T. JONES,
U. S. Commissioner.

WILLIAM A. PALMER, sworn and examined on behalf of the libellants, says:

I am superintendant of ferry; familiar with ferry-boats and their value; have been so for this 20 years. Before that I was occupied as builder for Hoboken L. & I. Co. as house-builder, & repairing boats for eight years; know the "James Watt;" saw the collision; nothing was done to the boat from that time till she was put under the charge of Miller to be repaired; it was in June, 1866. I know the market value of ferry-boats; I am familiar with the cost of chartering and
201 hiring ferry-boats.

Q. What was the market value per day of the "James Watt" during the time she was undergoing repairs, in June, 1866?

A. $75 per day. She was 16 or 17 days undergoing repairs. I think it was 17, including Sundays. She was repaired under my superintendance. I have always acted, and did then act, under the agent of the company, Mr. Shippen. The way of repairing boats or doing anything else for the company is this: All material is bought in large quantities, at wholesale prices, and charged to the store; then, when used, charged to each job at a profit; at the usual profit, just so as to make the store pay; generally less than the price charged for same articles by other dealers; shipyard department is seperate department

from the ferry. All the work done in the shipyard is charged to the ferry, the same as to other individuals, outsiders. When there is a job like this to do, I tell the men to do it, and to go to the yard and get the stuff, & let the man there take an ac. of it; labor is kept by a time-keeper.

Q. Do you know the cost of the repairs of the "James Watt,"
202 in consequence of the collision? If so, state the amount.

A. $1,240 44 (twelve hundred & forty $\frac{44}{100}$ dollars.) These repairs were put on last June. The amount named don't include my services or that of the agent of the company. My services on this job were worth about $3 per day, I suppose; those of the agent, $2 per day, perhaps. No repairs were put on the James Watt other than those made necessary by the collision. No work was done except what was indispensable to put her in her former condition. I hurried the repairs as much as I could, because we wanted to use the boat. I superintended the repairs every day from beginning to completion; & so did the agent, Mr. Shippen; 15 working days & 2 Sundays. We use our boats Sundays; more boats that day than others, & carry more passengers that day than week days. The bills shown are the items of cost of repairs. (Read & marked Exh. A & B.) Exh. A is the shipyard bill; Exh. B, the ferry-yard bill. Total of both is $1,240 44, & covers
203 all the expenses of the repairs made necessary by the collision, but does not include the cost of superintendance of myself & Shippen, nor the use of the boat.

Cross-examined:

My superintendance for co. extended over all the repairs & building of the co. The libell'ts owns lands, houses, & ferry-houses, and my superintendance extends over the building of new houses, & the building and repairing of ferry houses & boats. My business, originally, was house-builder. I never worked as ship-carpenter, but have as ship-joiner; only superintended such carpenter work; got our ship-carpenters to attend to work. Mr. Wallace is our head ship-carpenter. I tell them how to make repairs, if Wallace sends the men; tell them how to do it, & what to do; how I want it done. Miller commenced work second day after collision; nothing done first day after it. The cost of work, amounting to $1,240 44, consisted of labor & materials. I kept no ac. myself of number or time of men employed, nor of quantity of materials used. Exh. A is in handwriting of clerk & time-keeper at the ferry-house, Mr. Housemann; think Exh. B is in handwriting of Mr. Wallace's son; neither is in my handwriting. I know nothing of
204 particulars or amount of repairs, except from these bills. They came to me through the regular channels, & I have no doubt but they are correct.

(Claimant's counsel objects that the testimony of this witness does not show the particulars & amount of the cost of the repairs.)

I know what prices were paid ship-carpenters in June, 1866—$3 50 to $4 50 per day to journeymen. When we got them from our yards we paid $3 50, & from N. Y. $4 50. Mr. Wallace attends to that, and I did not. I have known the Watt ever since she was built; I think about thirteen years; don't know positively. She isn't thirty years old. She has been built since I have been with the co., & since the "John Fitch" was built. "Chancellor Livingston" & "Rumsey" were also built before the Watt. Her *tonage* was 426; & she is not the oldest boat of the company.

Q. How do you get at the market value for charter or hire of the Watt in June, 1866?

A. The company had occasion to hire a boat from the Jersey City Co., not as large as the Watt, some ten years ago, at $50 per day, and *and* I consider she is worth $25 a day more now than then. The
205 Weehawken Co. applied to us for a ferry-boat in 1865. Mr. Shippen & myself concluded to let the boat go for $75 per day, without crew or anything else, & Mr. Stevens, the owner, stopped it because the price was too low; came in as we were concluding the bargain. I consider the Watt worth $60,000; the Morristown cost about $110,000; the Rumsey about $100,000. They were built, one year before last, and one this year—just finished. They run on the same ferry with the Watt. I have now stated all the facts on which I based my conclusion that $75 was the market value in June, 1866.

Q. Did you know of any boats of the size & class of the Watt that were chartered in May or June, 1866?

A. No, sir.

Q. Do you know whether there was any demand in the market for such boats in May or June, 1866?

A. No, sir. The place of the Watt was occupied by another boat during the making of these repairs, by "The Chancellor Livingston," one of the lib'll't's boats; she is not a surplus boat; "The John Fitch" is. She was taken off from the Christopher-st. ferry & the
206 "John Fitch," our spare boat, put *them* in her place. The crew of the Watt was transferred to the "Fitch." We always have one boat under repair. We endeavor to do so, & keep the spare boat in her place. I did not estimate the Watt at $60,000 from knowing of like boats being sold for that. I know we couldn't build a new boat like her for $60,000. She was worth over $10,000 in June last. We could have got $50,000 in 1866 for her, I think. The Watt isn't about played out. She has been rebuilt.

Re-direct:

Q. Are there, so far as you know, any ferry-boats in these waters similar to the James Watt, & her sister boats, that can be hired at any price?

A. No, sir; I don't know of any.

Q. Were there in June, 1866, so far as you know?

A. No, sir.

Q. Does the Ferry Co. have to keep a spare boat always on hand because of the fact that no ferry-boat can be readily hired to supply a vacancy?

A. There is no such thing as hiring a ferry-boat; hence we now are compelled to keep a spare boat. We now keep two on hand.

207 Q. What would it have cost, in the summer of 1866, to build a new boat like the James Watt?

A. About $90,000.

Q. What were you paid by the Ferry Co., in June, 1866?

A. $175 per month. We were building a stable & new houses in June, 1866. No other boat undergoing repairs at same time with the Watt. I have worked as a ship-joiner. We could have repaired the Watt the first day after the collision, but did'nt because we wanted to wait for claimants to come examine her. It is customary in the trade to charge 50 c'ts per day profit on the wages paid by the boss to journeymen house carpenters & joiners & in ship-yards.

Cross-examined:

Can't say whether all ferry companies keep spare boat; think they do; don't see how they can get along without it. In charging $3 per

day I estimated that it took half my time on these repairs. I crowded the men all I could, & never wasted a dollar.

W. A. PALMER.

208 Subscribed & sworn to before me, July 9th, 1867.

S. T. JONES,
U. S. Commissioner.

Adjourned to July 11th, 1867, at 10½ a. m.

JULY 11TH, 1867. Hearing continued.

THOMAS SMITH, sworn & examined for libellants, says:

I was capt. of James Watt, & on board at time of the collision. She was struck on the port side right aft the cabin doors, knocking both doors down; tearing away the joiner work aft of that, breaking the wearing piece, plank-shear, & lining; tearing it all off outside of the deck beams, & carrying it all overboard clear around to the opposite stanchion on the other side of the boat; all the railing and anchor; all outside the deck beams was completely carried away; the ends of the deck beams where they were mortised in, were broken off; think every one was twisted or broken off & had to be replaced. The parts carried overboard were lost; doors didn't go overboard. The facing piece was carried away with the rest. The anchor, which was replaced on the boat, was same size & kind of the one lost.

Cross-examination:

I was pilot of the Watt, at the time of the collision, at the wheel. I was examined as witness for libellant on the trial; am not a ship-carpenter nor a ship-joiner.

THOMAS SMITH.

Subscribed & sworn to before me, July 11th, 1867.

S. J. JONES,
U. S. Commissioner.

209 JAMES HOUSMAN, sworn & examined for the libellants, says:

I am store and time keeper at the ferry for libellants, and was in June last. Exh. B is in my handwriting.

Q. State whether or not the amount therein set down for labor & materials was expended for the repair of the James Watt in June, 1866, on or about the days therein named?

A. Yes, it was. I keep all the time books & books for supplies at the ferry; and made the original entries in the books at the time, and this bill is a correct transcript therefrom. These expenditures were all for the repair of the damages to the Watt by reason of the collision. The day's work is charged for am't actually paid—no profit. We do work for ourselves only in that yard. Charges for materials are all at wholesale cost prices. This bill amounts in all to $240 13.

Cross-examined:

I am not a ship-carpenter nor ship-joiner. I get at the days' work charged by seeing the men at work at the time, and keeping a memorandum thereof. They are paid at another office of the company from a roll which I certify to be correct. The rate of wages charged, is given me by Mr. Palmer, the suprintendant, and I fix them in accordance with his instructions. No profit is added to the wages charged in this bill.

210 I keep an ac. of the materials charged as they were used on

board the boat. I delivered the most of stuff to the men on the boat & saw it go on; made a memorandum of weights & quantities at the time, & from that memorandum made the entries on my books. The materials are charged at cost prices as appearing from the invoices. The books which the ac. was made are here.

JAMES HOUSMAN.

Subscribed & sworn to before me July 11th, 1867.

S. T. JONES,
U. S. Commissioner.

GEORGE H. WALLACE, sworn & examined for libellants, says:

I am time-keeper for libellants in the ship-yard, and was in June, 1866, at the time of repairing the "James Watt." I keep the books of the company there. Exh. A is in my handwriting.

Q. State whether the amount therein set down for labor & materials was expended for the repair of the "James Watt," in June, 1866, on or about the days therein named?

A. *I* was; it amounted to $1,000 31. I took this from the books I kept. We do work for others than the Ferry Company at this yard. The prices charged here are the same rates charged to other people for similar items; all this work & this material was furnished to the Watt for repairing injuries occasioned by the collision. The work charged
211 for contains a profit of 50 cts. per day—the same advance charged on all jobs to other people. It is the usual advance charged by other ship-carpenters & ship-builders. This bill is a correct transcript from the books now present.

Cross-examined:

I got the time and labor charged by daily attendance & memorandum at the boat at the time, from which I made the entries at the time. I got at the wages by adding 50 cts. to the amount paid per man as profit & for use of tools, bossing the job, &c. This ship-yard did work for a number of other persons in 1866—the books will show—for the steamboat "Delaware," the yacht "Maria," the st'b't "New Philadelphia," st'b't "W'm Cook," propeller, "John C. Stevens," st'b't "Passaic," barge "Swiftsure," st'b't "Ja's Belknap," yacht "Wave," lighter "Enterprise," propeller "Young Ameriea," steamboat "Bordentown," "Fairfield," and many others, as appear in the book produced. I don't think any of those boats were owned by Mr. Stevens or by libell'ts, except the yacht "Maria." I measured the materials charged for myself on board of the boat. Got at the prices charged from the invoices, adding about 10 per cent. profit. This 10 per cent. profit, & the 50 c. p'r day for men, is the whole profit charged in this bill. I worked at the trade of ship-carpenter about one year. I made no particular examination of damage done to the boat; saw the boat the day afterwards,
212 I think, lying at the ferry. I got at the 50 ct. additional charged for carpenters, from the practice in our yard, and what I understand to be the custom at other yards. I have seen bills of other yards, & the charge was 50 ct. above what I knew the men's wages were—Mr. Allison's yard, Jersey City; Mr. Hart's, Red Hook Point. He does long-shore work. Don't think of any other yard now whose bills I have seen.

GEORGE H. WALLACE.

Subscribed & sworn before me July 11th, 1867.

S. T. JONES,
U. S. Commissioner.

The counsel for libellants (Mr. Fuller) states that he caused notice to be sent to the office of the tow-boat "Cayuga" the morning after the collision; that the owner of the "Cayuga" might examine the nature and extent of the injuries to the "James Watt."

By consent of counsel for claimants, it is agreed that the statement shall have the like effect as if made under oath.

Libellants rest.

Evidence for claimant.

Proctor for claimant reads from minutes of testimony on trial as to part of ferry-boat struck by the Cayuga.

JOHN L. MYERS, sworn & examined for claimant:

213 I reside at New Providence, N. J.; at Brooklyn, in June, 1866. I was steamboat-builder then, and by occupation a ship-carpenter for thirty-nine years; have built, in shape of sub-contracting and direct building as principal, in all eighty-two vessels—all steam vessels. Have built three ferry-boats as sub-contractor. Thomas Collyn was partner with me; his business was at different places while I was with him. In New York City I saw the "Watt" about the 15th or 16th June, after the collision. She lay on the upper side of Hoboken slip. Mr. Van Santvoord, agent of the Cayuga, sent me to look at her. I examined the parts damaged; didn't measure them. There were beams broken on the guard; couldn't see what was under the guard. I was only on the deck. The deck planks were off, which enabled me to see the beams which were broken. I counted them; seven on the port side broken, & two badly shattered—equal to a break. The piece that goes along on the end of the beams, around on the side, I call the facing piece. The piece outside of that the wearing piece. The plank-shear goes on top of beams & facing piece. The deck beams are under the plank-sheer. The plank-shear extends over the facing and part on the beams, not over the deck.

214 The deck buts against the plank-shear. The butting piece is fastened to the fantail beams. The inside end of the fantail beams is mortised into a beam across the hull of the boat, which beam is about eight feet from the end of the hull. The butting piece is supported by the fantail beams. The inner end of the fantail beams are mortised into a beam which runs across the end of the boat. The butting piece is supported by the fantail beams being *tenanted* into it. The butting piece is sometimes of solid timber & sometimes in two halves. I made this diagram as a plan of boat as far as I could see it, marked Exh. 1. The shattered beams are marked with a cross on this Exh. Between the two that were shattered, are the ones which were broken on the guard, as far as I could see. What was under the deck I couldn't see. There were some pieces of plank outside of the combing. The combing is a thick piece of timber laid right around the gunwale of the boat on which the cabin stands. The deck was off in front of the beam into which the fantail were mortised. Men had been at work taking it off when I was there. All of the fantail beams were exposed to view when I was there. At the time I was there the facing piece & butting piece on the side of the boat were both off; all the beams from the head-most shattered beam to the beam into which fantail beams are mortised, were more or less marred or broomed.

215 I couldn't say that any were broken. The fantail beams, I think, were rotten at the outer ends. They were broomed upon the ends very much indeed, & I think they were rotten.

Q. How could a blow on the side where the beams are marked as broken, between the two shattered beams, start the facing piece off of those beams?

(Objected to on the ground that the witness has not been shown to be a nautical expert, and that the question calls for an opinion & not for a fact; and furthermore, that it isn't covered by the order of reference. Objection overruled; question allowed; exception by libell'ts' counsel; objection withdrawn.)

A. It would depend upon what angle the boat went in. If she went right in square at right angles it would'nt start anything, but cut right in; if she went in on an angle of 30 or 45 degrees, and the opposite boat's bow pointing aft, it would have a tendancy to crowd everything right aft & overboard to the bend on the stern, and then the side piece would break off if the timber and everything was sound; if it was not sound, the plank-shear being fastened together to the butting piece, it would continue around the stern, & all go off, if the ends of the beams were rotten, as I say they were.

216 (Def'ts counsel moves to strike out the answer as not being responsive, & as not bearing on the question of damages. Decision as to motion reserved. Objection withdrawn.)

Q. How could the bucking piece be started by any blow on the side of the boat forward the bucking piece?

A. It could not be unless the outer ends of the fantail beams were rotten, for this reason: the timber would part from the butting piece right on the bend, & leave the butting piece on the boat, while the rest would go off.

Q. What would be a fair estimate of the cost of repairs on this boat for the damage on the side from where there was any breakage aft to the bucking piece?

A. A fair estimate, including ship-carpenters' and ship-joiners' work, would have been $450, at the rates of June, 1866. I could have crowded up a job like that, & have done it in four days, up to the end after the bucking piece.

Q. Would the repairs of the damage on the side of the boat up to the bucking piece have involved the necessity of new deck or of new sheathing inside of the combing?

A. No, sir.

Q. Would the butting in new fantail beams for a new bucking
217 piece involve the necessity of new deck or new sheathing, or part new deck or part new sheathing, forward of the beam into which the fantail beams are mortised?

Q. It would; you would have to take the sheathing up at the least calculation 25 to 30 feet in order to break joints of the deck planks. I heard Miller testify as to the repairs which were made to the Watt; he did not seperate the different parts of the work.

Q. Which would be the more expensive part of the repairs?

A. Around the stern would be nearly twice as much expense as the repairs on this side. The ends of the fantail beams (outer ends) appeared to me to be rotten by continual using—bucking up against the slip—had become soft.

Q. After the repairs testified to, as made by Miller, on the after end of the boat, including new fantail beams & other repairs connected with them, would the boat be only as good as it was before the collision, or be a good deal better than it was before the collision?

A. That part of the boat which underwent the repairs would be 50 per cent. better after than before.

Q. Would it or not be as much better than it was before by the amount of the value of the repairs on the end of the boat about and con-
218 nected with the fantails?

A. I think not. The whole amount, I think, about 50 per cent. In June, 1866, it was customary to add a profit to price paid men at ship-yards; the am't was 25c. to a man in N. Y., as established at a meeting of the bosses. That charge is to come for use of tools, rent of yard, &c. It does not include superintendance of work at all. It does not include for extra-pay to foreman, nor to boss for his services. He charges $1 per day for himself more than he pays men. I paid 8c. an inch, board measure, for first quality oak timber; 6c. deck plank, first quality. Don't know price of yellow-pine deck plank. It is not customary, as a general thing, to charge a profit on the materials.

Adjourned to June 16th, 1867, at 10 a. m.

" " " 19th, " libell't, & resp't appearing & consenting.

JULY 19, 1867. Hearing resumed.

JOHN L. MYERS, produced for cross-examination, & being cross-examined says:

I am not engaged in steamboat-building at the present time; not since a year ago from the first of June, 1867; not since June 1st, 1866.
219 I built three ferry-boats.

Q. How did you fasten the fantail beams into the butting piece in the boats you built?

A. The screw bolted through the end of the beams. I could'nt say as to how the ends of the fantail beams of the Watt were fastened into the butting piece. If the ends of the fantail beams had been simply mortised & tenanted into the butting piece, I could'nt say whether they would draw out more easily than if fixed in the way I built by screw-bolts. The boat laid on the upper side of the ferry with the stern in shore, and alongside the pier, a little ways off from the ferry *rack*. Think there was another boat, scow, or something between her & the pier. Should think she was three or four feet off from the bulkhead. There was a plank from the bulkhead to her stern. When I first went aboard I noticed that the plank-shear at point of collision was broken through, & it was gone. There were some short pieces of deck planks outside of the combing abaft of where the boat went into her. I could not see what was under these deck planks. Rotten wood won't broom. I tested some of the timbers with my foot to see if they were rotten.

That ain't the usual way of testing timber for that purpose. I can
220 tell rotten timber by my feet. I tested the ends of those fantail beams in this way. Did'nt bore into nor cut it in any way. Sound timber will never assume the appearance of rottenness.

Q. Suppose you drive an iron spike into a new timber, & after it has been a short time subject to the action of salt water & of dirt, won't it present a nasty discolored appearance, resembling somewhat rotten timber?

A. No, sir; it won't resemble rotten timber; it will turn timber a blueish color. The acid in the wood & action of salt on it will cause this.

Q. If the Watt was struck at right angles at the point which you have designated as the place of collision by a vessel having sufficient momentum, would it not have cut the stern of the Watt square off?

A. Every vessel would not. The Cayuga would not have done it. I have seen the Cayuga, but don't know much about her.

Q. What would have been the effect of such a blow upon the Watt by a steamer such as you believe the Cayuga to be?

A. Well, it would depend in a measure upon the speed of the Cayuga; not on the speed of the Watt.

221 Q. Suppose the speed of the Cayuga to have been from five to eight knots?

A. I think she would have cut in through her guard, probably up to the hull of the boat.

Q. Having cut in thus far, in this manner, if the Watt were going ahead from eight to ten knots, would not the effect have been to have stripped the end of the stern from the Watt?

A. It would have a tendency to strip off the guards down to the end of the fantail on the bend. If the beam had been sound, the facing, lining, & plank-shear would then break off.

Q. If the Cayuga had struck at less than a right angle, pointing aft, and had gone through the plank-shear at the point of collision which you have designated, both boats going at the rate I have named, what would have been the effect then upon the Watt?

A. To strip her guard off down to the bend of the fantail.

Q. Explain more fully what you mean by the bend.

A. I think that is a fair explanation.

Q. Did you see whether the big beam into which the fantail beams were mortised was broken or not?

A. No, sir; I did'nt see.

Re-direct examination:

The large beam into which the fantail beams were mortised was
222 rotten, I think. I examined it with my heel, and it appeared to be rotten in the middle. I mean by the middle, in the center of the boat. I think the decks had leaked, & water got into it. When timber rots, it generally commences to rot in the center of the stick. A timber might, in some cases, be apparently sound outside, & yet be so rotten inside as to be unfit for use. I think that the condition of the ends of the fantail beams was such that though the boat might have run through the season, it would, nevertheless, have required to be repaired at the end of the season.

JOHN L. MYER.

Subscribed & sworn to before me July 19, 1867.

SAMUEL T. JONES,
U. S. Commissioner.

DIVINE BURTIS, sworn, examined for claimants, says:

I am a ship-carpenter; have followed that business for forty years or so; have or had up to January a ship-yard, which my son has now, foot of Cannon street, Brooklyn; have built ferry-boats, & have done repairing for Jersey City Ferry & Central Ferry both; built all the boats built for both ferries. I always made a charge in addition to cost for
223 labor in my ship-yard, & always understood it to be customary. The usual addition made in May & June, 1866, at my yard was 25c. per day. There was a little variation at other yards at that time. That was owing to the war. They got it disarranged some. It was'nt too much. Don't know as I can answer for others. It was all I charged. The work could be procured to be done for that. I would have done it for that.

Cross-examined:

I don't recollect as to the custom of yards in New Jersey as to this point.

DIVINE BURTIS.

Subscribed & sworn to before me July 19th, 1867.
SAMUEL T. JONES,
U. S. Commissioner.

Adjourned to July 20th, 1867, at 11 a. m.

JULY 20TH, 1867. Adjourned to July 26th, 1867, at 10.

JULY 26TH, 1867. Hearing resumed. Claimants rest.

Evidence for libellant.

JAMES MILLER, recalled, examined, says:

I wouldn't call the fantail beams of the James Watt anything but sound timber. The timber was stained from use by the water & wear, dirt working through the deck, & they was *withed* up on the end
224 by the butting piece getting knocked off. It could not have *withed* or broomed if it had been rotten. The big beam into which the fantails were mortised was partly broken & partly broomed up on the port side, where she was run into. We *remided* that by shoving a piece alongside of the end & bolting it down. That beam in the center of the deck where the deck had leaked was rotten about two inches in; that was the only rotten piece I saw. That beam wasn't taken out & is in her now. We generally test the soundness of timber by boring with an augur or sounding it with a mallet; if the borings are sound, the timber is sound; if it is hollow we can generally tell by sounding it. I don't think the soundness of timber could be tested with the foot. It may look dark & stained, & be perfectly sound & have as much strength as it ever had. The end of the Watt which was carried away was supposed to be the same as to soundness as the end that remains. The other end is on now & in daily use ever since & apparently as good as when put on. Both ends were put on at same time, when the boat was built. I should suppose end carried away would have lasted as long as the end that remained. Anything always breaks at the weakest
225 point, and that was a solid bucking piece on the Watt, put on of solid timber, the fantails *tenanted* & mortised in. The weakest point was at the end of the fantail beams, & that was the reason the collision carried it off. I think fantail beams were *tenanted* into the butting piece seven or eight inches. The weakest point I said was at the end of the fantail beams, where they were *tenanted* into the butting piece, weaker than the butting piece itself, & that was the reason they tore out there before the butting piece would break. The butting piece itself forms the bend.

Cross-examined:

I did not bore into these fantails to see if they were sound. We split them out with iron wedges to get new ones in. They are blunt-bolted on to the gunwale of the boat, & sometimes we put wedges in one place & sometimes in another, wherever we thought they would split out easiest. I couldn't say whether there was any screw or pin in the end

of the *tenant* or not; the end of the butting piece was gone. I can't say as to the other end in that respect. The old fantail beams were not used in repairing the boat. In repairing the boat we didn't put on a solid butting piece as before; we put it on in two pieces & of
226 course had to screw-bolt it together. I don't think we put any bolts clear through the end of the beams in repairing this boat. I didn't observe any rottenness in the ends of the old fantail beams. I had nothing to do with building the other end of the boat. I never saw the ends of the fantail beams at the other end of the boat. You couldn't see them without the butting piece was taken off, even if the deck was taken off.

Re-direct examination:

In putting on a new butting piece, the old fantail beams were too short to be used.

JAMES MILLER.

Subscribed & sworn before me July 26th, 1867.
SAMUEL T. JONES,
U. S. Commissioner.

The proctor for libellants now reads from the minutes, upon the trial of the evidence in relation to the soundness of the "James Watt."

JOHN BLACK, sworn, examined for libellants, says:

I am ship-carpenter by trade; I worked on repairing the Watt in June, 1866. The fantail beams seemed to be sound; the ends of them were broomed up. Rotten wood will not broom. I never *see* it
227 broom; it will break off. The grub beam was left in the boat; it was a little bit rotten on top, right about the center of the boat. That was the only rotten timber I saw in making those repairs. I know John L. Myers, witness for claimants. He used to work for Collyn; I saw him aboard the Watt when these repairs were being made. He stayed about ten or fifteen minutes, I should say; walked about, looked around, & walked off again. Didn't see him test the timbers in any way; I shouldn't think you could properly test the soundness of timber with your foot. I have tested a good many ships. It is tested by boring into it & with the hammer too. It may look dark, stained, & discolored & still be sound. My opinion as to the reason timber broke off where it did is the same as that of last witness, whose testimony I heard. The end broken off would, but for this collision, have lasted as long as the other, probably.

Cross-examined:

The libellants hired men to work on this job from N. Y. Mr. Miller was foreman, having charge of the job; I couldn't say the day I
228 went there; very little had then been done; deck not taken up. I didn't bore these fantails to see whether they were sound, nor try them with the hammer; never saw the fantails on the other end of the boat, nor noticed particularly the butting piece at the other end.

Q. What do you understand as the butting piece?

A. A solid piece of timber that forms the end of the boat into which the fantails are *tenanted*. I call it butting piece because it bucks against the dock. I call the big beam into which the fantail beams are mortised the grub beam.

JOHN BLACK.

Subscribed & sworn before me July 26th, 1867.
SAMUEL T. JONES,
U. S. Commissioner.

Testimony closed. Adjourned to September 7th at 10 a. m.

NOV. 9TH, 1867. The cause having been submitted by counsel for both parties, the commissioner having considered the evidence & the arguments of counsel directs that a further hearing be had on the 12 inst., at 10 a. m., on the question of demurrage, either party to have leave to offer further evidence on that point.

229 U. S. district court.

THE HOBOKEN, &C., CO.
vs.
THE STEAMBOAT "CAYUGA," &C.

Additional testimony on the question of demurrage before Samuel T. Jones, U. S. comm's'r, November 12th, 1867.

WILLIAM W. SHIPPEN, sworn for libellant, says:

I reside at Hoboken, New Jersey, general agent & manager of the Hoboken Land & Improvement Co., & have been for nearly 21 years now. I am familiar with ferry-boats & their value.

Q. Are you familiar with the cost of [chartering] and hiring ferry-boats & steamboats of similar class?

A. Yes, sir, I am.

Q. Do you know the value of such boats in these waters?

A. Yes, sir, generally. I have bought and chartered a good many boats.

Q. And you know then the market value of such boats?

A. Yes, sir.

Q. What do you understand by the market value and how do you ascertain it. I refer to the per diem value?

A. I understand it to mean what the per diem value of such a boat is in & about New York Harbor. I get at it by what charters are paid for boats of different values here in the harbor.

Q. What was the market value per day of the James Watt during the time she was undergoing repairs, in June, 1866.

230 A. I should say that $75 per day was a low value for her.

Q. What was the money value of the James Watt in June, 1866.

A. She was worth about $60,000.

Q. Was the market value of the James Watt in June, 1866, as high as it has been since that date?

A. Yes, sir.

Q. State how you get at the market value of the James Watt in June, 1866.

A. I have already stated that the value of boats was as high in June, 1866, as since, and in Oct., Nov., & Dec., 1866, I paid a charter for st'b't "Meta" (a boat worth not over $15,000) of $75 per day, which included her crew in that case, worth, say, about $25 per day, making am't allowed for boat alone about $50 per day. I paid in June, 1867, to the steamboat "William Harrison" $115 per day, which included $45 per day to cover expenses, making am't allowed for boat $75 per day. She has since been sold for $22,500.

I also, in July, 1867, paid for the steamboat "Shultz" $75 per day, & for the "Martha Washington" $75 per day. The two last worth not over $15,000 each. The $75 included their running expenses, making am't allowed for boat alone about $40 each per day. I chartered from July 17, to Aug. 1, 1867, the st'b't "Perry" for $75 per day, which
231 included about $6 per day for pay of capt. and engineer, making about $69 per day for boat alone. She was offered to me at that time for $25.000, & since that her owner told me he would take considerably less for her. In July, 1867, I chartered the "Tho's Collyn" for six days @ $200 per day, which included about $15 for officers & crew, leaving am't allowed for boat alone about $185. I suppose she is worth say $140,000; I mean the new "Thomas Collyn."

Based on the foregoing facts, I consider the James Watt reasonable at $75 in June, 1866.

Cross-examination:

The general value of a boat is a fair criterion for her value to charter. The chartering value of vessels of equal value may differ, from various causes. I know of no ferry-boats of size & class of the James Watt chartered in June, 1866. I negotiated once for charter of one of our boats to the Weehawken Co.—the one *refered* to by Mr. Palmer. That was in 1865. Negotiations fell through for reasons stated by Mr. Palmer. We were offered $75 per day. This $75 included only the boat—the "John Fitch"—not so valuable a boat as the Watt. I do not know that there was any demand in the market for charter of such boats as the James Watt in May or June, 1866. It can hardly be said that there ever is any such demand in the market.

232 To commissioner:

There was no change in the per diem value of ferry-boats from 1865 to June, 1866, that I am aware of. I should say there was none. I would know it if there was.

W. W. SHIPPEN.

CHARLES A. WOOLSEY, sworn for libellants.

My residence is 38 Grand st., Jersey City; am superintendent of Jersey City Ferry; have been for 22 years on the 15th November inst. I can't say I am familiar with cost of chartering ferry-boats, for I never had occasion to charter any.

Q. Are you familiar with the per diem value in these waters of boats of a similar class with the James Watt?

A. Well, ferry-boats of about capacity & value of the James Watt I would not be willing to charter for less than $75 per day, exclusive of running expenses. I should consider that about a fair market value for a boat like the James Watt. I know her.

Q. Was the market value in June, 1866, about the same as since, per diem?

A. I should think about the same. I have got ferry-boats that I wouldn't charter for $150 per day, worth about $110,000. If I could spare them from the ferry, wouldn't charter them for this sum.

233 Cross-examination:

I speak of the boats of Jersey City Ferry Co. I knew "James Watt" in June, 1866.

Q. How do you get at market value of the "James Watt" in June, 1866?

A. I judge from what I would have been willing to charter for; would

not have been willing to charter boats of same value for less than $75 per day. I knew of no boats of the size & class of the Watt that were chartered in May or June, 1866. I don't know whether there was any demand in the market for such boats at that time. I never have chartered ferry-boats. I only judge of value from price I would fix upon boat of same class if I were going to charter one.

To commissioner:

I never, of my own personal knowledge, knew of a ferry-boat being chartered. I have known of a great many boats that were said to have been chartered. I will correct my previous testimony by saying that I did once let the Hoboken Ferry Co. have one of my boats for a few days to run on their ferry, some ten years ago, but don't know at how much a day. I know nothing about the price of boats which have been chartered.

CHARLES A. WOOLSEY.

234 Adjourned to Nov. 14th, 1867, at 10.

NOV. 14TH, 1867.—Adjourned to Nov. 16, 1867.

NOVEMBER 16TH, 1867.—Adjourned to Nov. 18, 1867, at 10 a. m.

NOVEMBER 18TH, 1867.—Hearing resumed; counsel for both sides appearing.

CYRUS P. SMITH, sworn & examined for libellant:

I reside in Brooklyn; am managing director of the Union Ferry Co. of Brooklyn. I have been for twelve years; have been connected with ferry business for twenty-five years; am familiar with ferry-boats & their value, and have had some experience with hiring & chartering ferry-boats.

Q. Do you know the market value of such boats, in these waters, per diem?

A. That depends upon the purposes for which the boats are used.

Q. Do you know the value in this market of ferry-boats?

A. Yes, sir; generally, I do.

Q. Do you know the "James Watt?"

A. I do.

Q. Is the per diem value of ferry-boats same now as in 1866?

235 A. About the same.

Was there much of any difference between the per diem value in June, 1866, & the year preceding that?

A. I should think not.

Q. Did you know the money value of the James Watt in June, 1866?

A. No, sir.

Q. Assuming her value then to have been $60,000, what would have been a fair per diem value for the use of the boat alone without officers or crew in June, 1866, as a ferry-boat?

A. From $75 to $100 per day on a ferry that is required to keep up their line of travel.

Q. Would you have considered that a fair estimate of one of the boats of your own company, at that time worth $60,000?

A. Yes, sir; for one of the boats of our ferry, the Hoboken, Jersey City, Williamsburg, or any of the large ferries.

Q. What do you consider the per diem market value of one of your boats now?

A. Not less than $75, & from that to $100. I would not charter one of them for $100—any boat we have got.

Cross-examination:

236 I don't know certainly the *tonage* of the James Watt. I estimate it. I don't know her power; never examined her engines with that view.' She is longer and larger and, I think, more *tonage* than any of our boats; think she is about 180 to 190 feet long, & the longest of our boats is 170 feet. She is worth more for the Hoboken ferry, & less for ours, than our boats. Our boats since the war have cost on the average from $40,000 to $70,000 to build. We chartered one of our own boats for two days only, in 1863, to the government for $150 per day. She was worth then about $40,000. We have spare boats. We keep sixteen boats, & run thirteen constantly. Sometimes we have five boats disabled; always keep three spare boats. I don't know that there was much difference in the demand for steamboats between the years 1865 & 1866; don't know much about demand for any boats but ferry-boats. I don't know that in 1865 there was great demand for boats because of Government using boats. There was in 1862-'3-'4. I don't profess to know anything about boats other than ferry-boats. The demand for them is about the same the year round. I don't know of any demand for boats of the size & class of the Watt in 1865-'6 except for ferry-boats. I don't know as any boat like the Watt could have been chartered in June, 1866. The charter value of a ferry-

237 boat, built to suit the ferry on which she runs, is very uncertain & contingent, from the fact that every company want all the boats they have got.

Q. How do you get at the per diem value of the Watt in June, 1866—the market value per day?

A. I assume, & happen to know, that no ferry in this harbor have more boats on hand for use than their daily business requires, & no company can afford to loose the use of a boat when they are required by their charter or lease to keep up their line of travel, for less than $75 per day, whether the boat be worth $10,000 or $100,000. The boat we chartered in 1863 is the only one we have hired out.

Re-direct:

The only instance in which I tried to charter a boat for the use of our ferry was a boat that belonged to the Newburg Co., in 1863—a boat which we had sold them for $8,000. They offered to charter her to us at $75 per day, we taking her at, and returning her to, Newburgh, at our expense. At that time so many of our boats were disabled that we couldn't keep up our lines, &, considering the time of getting boat down & getting her back, 'twould be better to keep our machanics to work night & Sundays rather than take that trouble, & so we did. A ferry-boat must

238 be adapted to the ferry slip to be available on any ferry, consequently they have a greater value for ferry purposes than other steamboats.

C. P. SMITH.

Libellants rest.

Adjourned to November 20th, 1867.

NOV. 20TH, 1867.—Adjourned to Nov. 22d, 1867.

Evidence for claimant.

GEORGE L. GARLINK, sworn:

I am agent for Schuyler line of steamboats; have been engaged in that line about 11 years, & in steamboating 27 years; *know* James Watt in June, 1866—not her value. I did not know her *tonage*; familiar with value of steamboats; not of ferry-boats, but of other boats I am. I have had much experiance in selling, hiring, & chartering steamboats. I have chartered, in 1865, the "Champion," the "Grant," "Newtown," "Baltic," & "Sarah A. Stevens." That is all, I believe. This was in 1864–'5. The "S. A. Stevens" was, in 1863–'4 & '5. She was worth $20,000 in 1865. We chartered her for $40 per day in 1863, & continued on same charter at same rate during part of 1865. Then she was dis-
239 charged the latter part of 1865, Sept. or Oct. I think I attempted to charter her in 1866, & couldn't do it at any price at any time during that season. We chartered a boat fore part of winter of 1865, (the "Newtown," a ferry-boat;) think it was 1865; won't be positive. We owned her. It was previous to 1866; don't remember when she was discharged; attempted to charter her in 1866 & couldn't; havn't chartered any boats since 1865, only from day to day for a special purpose, as for an excursion. We had four or five other boats lying idle, doing nothing, in 1866, during whole season; couldn't charter them. There was no demand for boats in May or June, 1866. I don't think the James Watt could have been chartered in May or June, 1866—not for any purpose that I know of. She would not have been available for any purpose than for use as a ferry-boat, and I know of no place where a ferry-boat could have been chartered. I would have chartered one for $10 per day. We had the "Champion," "Grant," "Newtown," "Niagara," & the "Bell" lying idle in May & June, 1866. The Government were discharging many boats at that time, & in that way there was a great surplus at that time, but not in 1865. The James Watt could only have been chartered for a special purpose. I know the "Meta." I did not know but from
240 hearsay of her being chartered in 1866. She ought then to have been worth $50, with crew & coal, for a length of time; more for a single day or few days.

Cross-examination:

Schuyler's line is engaged in towing on the river, tugs in the harbor, & freight-boats. I have been principally in this line of business. We have bought & sold passenger-boats. Our business has been principally with tow-boats. For the Champion we got good rates, between $300 & $400 per day in 1864–'5. For the Grant, $125 or $150 per day; Newton, $200 per day in 1865; Baltic, about $300 per day—between $300 & $400, I think; for the Stevens, $40 per day. I had no knowledge of the James Watt in 1866, only from crossing on her & seeing her.

Q. Do you know her market value per day in June, 1866?

A. She had no market value that I know of.

Q. Then if she had no market value in June, 1866, that you know of, you cannot give her market value per day for that month.

A. I cannot. I have not had a great deal of experience in ferry-boats, only in superintending, chartering, & overhauling them; never had anything to do with but two; that was in 1864,–'5, & '6. The
241 "Newtown" & "John Disney" were their names. The Newtown is the one I have been talking about. Mr. Schuyler chartered the John Disney to the U. S. for $300 per day; were furnishing crew, &

the Gov't coal. She was worth not over $15,000 in 1866, in my opinion. This charter was in 1863 & '4, Gov't took her; I can't give months, only years, in fixing these dates. Value of boats was, in 1865: Champion, $60,000; the Grant, $22,000; Newtown, $25,000; Baltic, $50,000; S. A. Stevens, $20,000. We own them now. I would have chartered the Newtown for $10 per day, in June, 1866. I don't know as I would have chartered a boat for a single day. The John Disney would have answered to run on the Hoboken ferry; she would answer for Brooklyn ferrys; I don't know whether she would fit in the slip; she would run between the slips; don't know as she would run up to the bridge.

HENRY SMITH, sworn.

I am in business at 15 South st., N. Y., ag't for Hud. River Steamboat Co., and the Albany & N. Y. day line of st'b'ts; in steamboat business since 1849 at this place; in st'b't business 25 or 26 years. I knew the James Watt in June, 1866. I couldn't say that I knew her value; was aboard of her when she was running, & when she was being repaired. Shouldn't take her value, as steamboats were selling then, to be over $20,000. I am familiar with value of st'b'ts. I bought some
242 boats for Gov't during war; did not charter any; our concern did; Mr. Van Santvoord made the contract. Our concern chartered some in 1865; I did not. The boats were River Queen, worth $125,000, for $200 per day; she was discharged in latter part of 1865; was under charter less than a year; I think that was the price. The "Seneca" in 1865, value $45,000, chartered for $70 per day, we furnishing crew. I tried to charter the River Queen & Seneca in 1866, & to sell them, but couldn't do either. Boats were worth more in 1864–'5, than in 1866. We had five boats idle in 1866, none in 1864–'5. I think the James Watt could not have been chartered in May or June, 1866. Charter value is double when a boat is taken for a few days only.

Cross-examined:

I am part owner of the line to which the Cayuga belongs—the Hud. R. Steamboat Co. This co. deals in tug-boats exclusively.

Q. Did you know anything about ferry-boats in June, 1866?

A. Very little. I don't know that any ferry-boats were chartered or sold in June, 1866, so I don't know what was then their per diem market value.

Re-direct:

There was no demand for steamboats in the market in June, 1866. I was in the market in June, 1866, trying to sell & charter st'b'ts, & met with no success.

JAMES LOUGHLIN sworn.

243 In business at 15 South st., N. Y. Steamboat business at that place since spring of 1864; in similar business since 1852. I knew the James Watt in June, 1866; I knew her value generally; about $20,000; think it would have been hard work to sell her for that in June, 1866. I am familiar with value of steamboats. In 1661–'2 we chartered the st'b't "Thomas P. Way" to C. Vanderbilt, at $1,000 per month. In 1862 we chartered the "Mayland" to U. S. @ $200 per day for one month, & at $160 per day for about six succeeding months. I chartered no vessels in 1865. There was considerable difference *at* 1865 & 1866; no demand in 1866; demand in 1865. I know of boats the Gov't had chartered in 1865, @ $35 per day; the Thomas Collyn & Pope

Catlin; Collyn worth $15,000; don't know as to Catlin. Don't know as the James Watt could have been chartered in May or June, 1866. She would not have been useful except as a ferry-boat. She would answer for excursions, but people would have preferred a steamboat. She would not generally charter as well as an ordinary steamboat of less value.

Cross-examined:

I own stock in st'b't line; managing owner of line of tug-boats; a little in the excursion business, & some in chartering; no experience as to ferry-boats, except to cross on them; no stock in Cayuga; I value the James Watt as a steamboat, not as a ferry-boat; know her size &
244 general appearance, but never examined her. The Thomas P. Way was worth $100,000 in 1862; the Mayland about $10,000.

Q. Do you know the per diem market value of the James Watt in June, 1866?

A. As a ferry-boat, I can't say.

Re-direct:

There was no per diem market value for ferry-boats in June, 1866, that I know of.

The testimony closed, cause submitted.

NOVEMBER 27TH, 1867.—Reported in favor of libellants, for damages sustained by them, as follows:

Am't of items in bill (Exh. B)	$240 13
" " " (Exh. A) $1,000 32, less $43 75, so as to allow but 25 cts. per day for use of tools, rent, of yard, &c.	956 57
Services of Mr. Shippen & Palmer for 15 days, (two Sundays deducted from claim,) making for Shippen $30, Palmer, $45—in all	75 00
Making total cost of repairs	$1,271 70
Interest on same from date of bills, June 30th, 1866, to date of report—1-4-27 d., @ 7 per ct	125 60
Demurrage, 17 days, @ $75	1,275 00
Amount reported Nov. 27, 1867	$2,672 30

S. T. JONES,
U. S. Commissioner.

245 EXH. A.—S. T. J.

Steamboat James Watt & owners to Hoboken Marine Railway,

							DR.
June	14th.	To	8⅜	days'	work,	$4 00	33 50
"	"	"	2¼	"	"	"3 50	7 88
"	15th	"	11¾	"	"	"4 00	47 00
"	"	"	2¼	"	"	"3 50	7 88
"	16th.	"	14	"	"	"4 00	56 00
"	17th.	"	2	"	"	"3 50	7 00
"	18th.	"	18¼	"	"	"5 00	91 25
"	"	"	2¼	"	"	"4 50	10 13
"	"	"	4½	"	"	"4 00	18 00

"	19th.	" 13	"	"	"5 00		65 00
"	"	" $2\frac{1}{8}$	"	"	"4 50		9 56
"	"	" $5\frac{1}{2}$	"	"	"4 00		22 00
"	20th.	" 16	"	"	"5 00		80 00
"	"	" $2\frac{1}{8}$	"	"	"5 50		9 56
"	"	" $4\frac{7}{8}$	"	"	"4 00		19 50
"	"	" 1	"	"	"3 50		3 50
"	"	" 1	"	"	"1 50		1 50
"	21st.	" 17	"	"	"5 00		85 00
"	"	" $2\frac{1}{8}$	"	"	"4 50		9 56
"	"	" $3\frac{1}{4}$	"	"	"4 00		13 00
"	"	" 1	"	"	"3 50		3 50
"	"	" 1	"	"	"3 00		3 00
"	22d.	" 15	"	"	"5 00		75 00
"	"	" $2\frac{1}{8}$	"	"	"4 50		9 56
"	"	" $3\frac{1}{4}$	"	"	"4 00		13 00

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June	22d.	For $3\frac{1}{4}$ days' work,			$3 50		11 38
"	23d.	" $5\frac{5}{8}$	"	"	"5 00		28 13
"	"	" 4	"	"	"4 00		16 00
"	25th.	" 4	"	"	"5 00		20 00
"	"	" 384 feet oak			@ 9c		34 56
"	"	" 1,638 " deck plank			" 7c		114 66
"	"	" 276 " white pine			" 7c		19 32

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EXH. B.—S. T. J.

HOBOKEN, *June 30th*, 1866.

Steamer James Watt to The Hoboken Land & Improvement Co.,

DR.

June	14th.	For 1 days' work					2 75
"	15th.	" $\frac{1}{2}$	"	"	@ 2 75		1 38
"	18th.	" $\frac{1}{2}$	"	"	" 1 87		94
"	"	" $\frac{1}{2}$	"	"	" 2 75		1 38
"	19th.	" 2	"	"	" 1 87		3 74
"	"	" 1	"	"	" 2 50		2 50
"	20th.	" 2	"	"	" 1 87		3 74
"	21st.	" 1	"	"	" 2 50		2 50
"	"	" 2	"	"	" 1 87		3 74
"	"	" 1	"	"	" 1 25		1 25
"	"	" $\frac{1}{2}$	"	"	" 2 75		1 38
"	22d.	" 2	"	"	" 1 87		3 74
"	"	" 1	"	"	" 2 50		2 50
"	23d.	" 4	"	"	" 2 75		11 00
"	25th.	" 4	"	"	" 2 75		11 00
"	26th.	" 2	"	"	" 2 75		5 50
"	27th.	" 2	"	"	" 2 75		5 50
"	28th.	" 2	"	"	" 2 75		5 50
"	"	" 317 lbs. wrought spikes			@ 7c		22 19
"	"	" 26 " sheet lead			" 13c		3 38
"	"	" 342 feet timber			" 4c		13 68
"	"	" 118 lbs. sheathing nails			" 9c		10 62
"	"	" 2 lbs. galv'd spikes, 12c. 24; 22 lbs. galv'd nails, 12c., 2 86					3 10

"	"	"	40 lbs. sheathing paper @ 8c.....	3 20
"	"	"	18½ lbs. yellow metal 42c.....	7 77
"	"	"	3 lbs. comp't nails, @ 40c., 1 20; 24 2½ wro't screw, @ 6c., 1 44.....	2 64
"	"	"	2 hooks & staples, 12c.....	24

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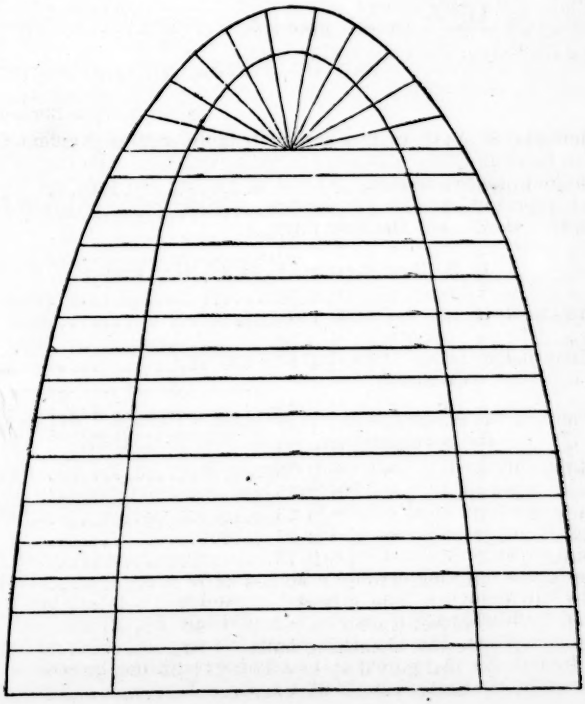
June 28th.	For	50 ft. clear pine board	@ 6c.....	3 00
"	"	"	175 ft. yellow pine sheathing " 7c.....	12 25
"	"	"	88 ft. oak timber " 9c.....	7 92
"	"	"	138 lbs. 5 in. x ⅜ iron, @ 7c., 9 45; 400 4 x ⅜ iron " 7c., 28 00.....	37 45
"	"	"	1 anchor, 414 lbs. @ 10c., 44 40; cartage, 1 25.....	42 65
			Total.....	240 13

Exh. B.—S. T. J.

(Indorsed:) Bill of damages. James Watt. 240 13; 1,000 32—$1,240 45.

249 "EXH. I."



250 U. S. district court, eastern district of New York.

THE HOBOKEN LAND AND IMPROVEMENT Company
vs.
THE STEAM-TUG "CAYUGA." } Commissioner's report.

To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

In pursuance of a decretal order, made and *entred* in the above-entitled cause, on the 23d day of May, 1867, by which, among other things, it was *refered* to one of the commissioners of this court to ascertain and report the damages sustained by the libellants, by reason of collision, in the pleadings mentioned, I, Samuel T. Jones, the commissioner to whom the matter was referred, do report: That I have been attended upon such reference by the proctors and advocates of the respective parties, and having heard and considered the proofs, arguments, by them respectively submitted, I do find that the said libellants have sustained damages, by reason of the said collision, as follows, to wit:

Cost of repairs to the ferry-boat, rendered necessary by the col-
251 lision, $1,271 70; interest on same from June 30th, 1866, (date of bills,) to date of report, $125 60; loss of use of ferry-boat during repairs, 17 days, @ $75, $1,275 00; amounting altogether, at the date of this, my report, to $2,672 30, (two thousand six hundred and seventy-two dollars and thirty cents.)

All of which is respectively submitted.

Dated Brooklyn, November 27th, 1867.

SAMUEL T. JONES,
U. S. Commissioner.

(Endorsed:) U. S. district court, eastern district of New York. The Hoboken Land and Improvement Company vs. The Steam-tug "Cayuga," &c. Commissioner's report. Abbett & Fuller, proctors for libellants. Amount reported, $2,672 30. November 27th, 1867. Filed November 27th, 1867. Confirmed nisi four days.

252 U. S. district court, E. D. of New York.

THE STEAMER "CAYUGA," HER TACKLE, &C.,
ads.
THE HOBOKEN LAND AND IMPROVEMENT Company.

Exceptions of the claimants of the steamer "Cayuga," to the report of the commissioner, dated Nov. 27th, 1867.

First exception. For that said commissioner, in his said report, has found and reported that the libellant has sustained damages for cost of repairs to the ferry-boat James Watt, to an amount exceeding the bills, Ex. A & B put in evidence by the libellants.

Second exception. For that said commissioner, in computing the cost of repairs, has not deducted an addition of 50 cents a day, which, as appears by the evidence, was charged on each day's labor, beyond what was paid by libellants, in making out said bill, Ex. A.

Third exception. For that said commissioner has allowed (or not de-
ducted, Ex. A,) a charge of ten per cent. on the cost of the ma-
253 terials, charged in said bill, Ex. A.

Fourth exception. If it shall appear that said commissioner has allowed as part of cost of repairs to the ferry-boat any proportional part of salaries of the agents, Palmer or Shippen, or other allowance as for their services, or the services of either of them, the claimant excepts to any such allowance as inadmissible on the proofs.

Fifth exception. For that the said commissioner in computing the damages for repairs, has allowed the whole cost of repairs, including repairs consequent upon the carrying away of the butting-piece, by reason of the unsoundness or insufficiency of the fantail timbers, by which it was supported, without any deduction for repairs consequent upon such carrying away of the butting-piece, or for the amount to which the boat was made better than before.

Sixth exception. The claimants except to the allowance of $75 a day for loss of use of the ferry-boat James Watt during repairs, there
254 being no proof of actual loss to the libellant to that amount, or to any amount, for loss of use, and nothing in the evidence to warrant the conclusion that, at the time, said boat or the other boats of the libellants used in her place, could have been chartered for that sum per day for the time charged, or for any sum, or that there was any market rate for charter per diem, or demand in the market for boats of the size and description of the James Watt.

Dated New York, Nov. 29th, 1867.

C. VAN SANTVOORD,
Proctor for Claimants of the "Cayuga."

(Endorsed:) U. S. district court, E. D. of New York. The Steamer "Cayuga," her tackle, &c., ads. The Hoboken Land & Improvement Company. Exceptions of claimants of steamer Cayuga to the commissioner's report. C. Van Santvoord, proctor for claimants. Filed Nov. 29th, 1867.

255 U. S. district court, eastern district of New York.

THE HOBOKEN LAND AND IMPROVEMENT Company
vs.
THE STEAMER "CAYUGA."

Exceptions of the libellant, The Hoboken Land and Improvement Company, to the report of the commissioner, dated November 27th, 1867.

First. That the commissioner deducted $43 75 from Ex. A, being a deduction of twenty-five cents a day from the per diem of the shipwrights, charged in Ex. A.

Second. That the commissioner did not allow interest on the amount, $1,275, allowed for demurrage.

Third. That the commissioner deducted ten dollars from the per diem of Palmer & Shippen, being a deduction of two Sundays at three dollars a day for Mr. Palmer, and two dollars a day for Mr. Shippen.

Dated New York, November 29th, 1867.

ABBETT & FULLER,
Proctors for Libellant, The Hoboken Land & Improvement Company.

256 (Endorsed:) U. S. D. C., E. D. N. Y. The Hoboken Land & Improvement Company, vs. The Steamer "Cayuga." Libellant's exceptions to commissioner's report. Abbett & Fuller, proctors for libellants, 229 Broadway, N. York. Filed December 9th, 1867.

257 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on , the 27th day of January, in the year of our Lord one thousand eight hundred and sixty-eight.

Present, the Honorable Charles L. Benedict, district judge.

THE HOBOKEN LAND AND IMPROVEMENT Company
against
THE STEAMER "CAYUGA," THE HUDSON River Steamboat Company, claimants.

On reading and filing the report of Samuel T. Jones, United States commissioner, to whom it was *refered* to ascertain & compute the damages sustained by the libellants, by reason of collision mentioned in the libel herein, by which there is reported due the libellants for the causes aforesaid, the sum of two thousand six hundred and seventy-two & $\frac{30}{100}$ dollars at the date of said report—the exceptions to the said report having been overruled by the court:

Now, on motion of Abbett & Fuller, esqs., proctors for libellants, it is ordered that said report be, and the same is, hereby in all things confirmed.

And on like motion it is further ordered, adjudged, and decreed, that the said libellants do recover against the said steamer "Cayuga," her tackle, &c., for the causes aforesaid, the amount so reported due, with interest thereon, from November 27th, 1867, the date of said report, together amounting to two thousand seven hundred and three & $\frac{47}{100}$ dollars, besides their costs, taxed at three hundred & ninety-nine & $\frac{20}{100}$ dollars; making in all the sum of three thousand one hundred and two & $\frac{67}{100}$ dollars damages and costs; and that said steamer, her
258 tackle, &c., be condemned therefor.

And on like motion it is further ordered, that unless an appeal taken from this decree, within the time limited and prescribed by the rules of this court, the stipulations for costs and for value on behalf of the claimants cause their stipulations to be performed; and that in default thereof, the libellants have execution thereon to enforce satisfaction of this decree.

CHARLES L. BENEDICT.

(Indorsed:) Vol. ——, No. ——. United States district court for the eastern district of New York. The Hoboken Land and Improvement Company vs. The Steamer "Cayuga," her tackle, &c. Order confirming commissioner's report, with final decere entered thereon. Abbett & Fuller, proctors for libellants. Filed and entered the 27th day of January, 1868.

259 U. S. district court, eastern district of New York.

THE STEAMER "CAYUGA," HER ENGINE, tackle, apparel, and furniture, The Hudson River Steamboat Co., claimants,
vs.
THE HOBOKEN LAND AND IMPROVEMENT Company, libellants.

Take notice that The Hudson River Steamboat Company, claimants,

hereby appeal to the next circuit court of the United States for the eastern district of New York, in the second circuit, from the whole and every part of the decree of the district court for said eastern district, made & entered in this cause, the 27th day of January, 1868, in favor of the libellants.

New York, February 1st, 1868.

Yours, &c.,

C. VAN SANTVOORD,
Proctor for Claimant.

To SAMUEL T. JONES, Esq., *Clerk.*

ABBETT & FULLER, Esqs., *Proctors for Libellants.*

(Endorsed:)

260 U. S. district court, eastern district of New York. The Steamer Cayuga, her engine, tackle, furniture, &c., claimants, vs. The Hoboken Land & Improvement Company. Notice of appeal. C. Van Santvoord, proctor for claimants.

Due service of a copy of the within notice of appeal is hereby admitted. N. Y., Feb. 1st, 1868.

ABBETT & FULLER,
Proctors for Libellants.

Filed Feb'y 3d, 1868.

261 Circuit court of the United States for the eastern district of New York.

THE STEAMER CAYUGA, HER ENGINE, TACKLE, apparel, and furniture, The Hudson River Steamboat Company, claimants & appellants,
vs.
THE HOBOKEN LAND AND IMPROVEMENT COMPANY, libellants & appellees.

To the honorable the circuit court of the United States for the eastern district of New York:

The petition and appeal of the above-named appellants showeth: That on or about the first day of December, 1866, the above-named libellants filed their libel in the district court of the United States for the eastern district of New York, against The Steamer "Cayuga," her engine, tackle, apparel, and furniture, and against all persons intervening for their interest therein, in a cause of collision, civil and maratime, in which libel it is alleged, and praying as therein contained, to which said libel the petitioners refer for its contents; that thereafter, on or
262 about the 28th day of December, 1866, the said claimants, having executed the necessary stipulations for costs and value, did file their claim and answer, alleging as therein contained, and insisting that the said steamer Cayuga was not liable for the damages claimed by said libellants, and praying that said district court would pronounce against the said libel and condemn the libellants in costs, as will more fully appear on reference to said answer, and to which, for the contents thereof,

these appellants ask leave to refer; that thereafter the said cause came on to be tried and to be heard before the Honorable Charles L. Benedict, sitting as judge of said district court, on the 18th, 19th, 25th, & 26th days of April, 1867, upon the allegations and proofs adduced by the respective parties, and said judge, having advised thereon, on or about the 23d day of May, 1867, made a decretal order or sentence, bearing that date, that the libellants recover in said action against The Steamer Cayuga, her engine, tackle, &c., the damages by them sustained by reason of the collision in the pleadings mentioned, with costs to be taxed, and that it be *refered* to a commissioner of said court to ascertain and com-
263 pute the amount of such damages, and to report thereon to that court, as by reference to said decretal order will appear; that after proceeding with such reference before Samuel T. Jones, esq., one of the said commissioners, he made his report to said court, bearing date the 27th day of November, 1867, to which report exceptions were taken by these appellants; and thereafter, after argument on said exceptions, a final decree was made, bearing date Jan'y 27th, 1868, overruling said exceptions and confirming said report, and for the recovery by said libellants against said steamer "Cayuga," her tackle, &c., of the sum of two thousand seven hundred and three $\frac{47}{100}$ dollars, the amount reported due in and by said report, with interest from the 27th day of November, 1867, the date thereof, besides their costs, taxed at three hundred and ninety-nine $\frac{20}{100}$ dollars, making in all the sum of three thousand one hundred and two $\frac{67}{100}$ dollars, damages and costs, as will more fully appear by reference to said decree, to which reference is had for its contents. And these appellants are advised and insist that said decree is erroneous, inasmuch as the libel should have been dismissed with
264 costs; and for that if said libellants were entitled to a decree for any damages, damages have been, which should not have been, allowed.

And the appellants, for these and other reasons, appeal from the whole of the said decree to the next circuit court to be held in said district, (and on the said appeal they intend to seek a new decision, on the facts on the pleadings and proofs in the district court, and other proofs to be produced in the circuit court, and to pray different relief,) and they pray that the said decree, and every part thereof, may be reversed with costs, or such other decree thereupon made as to the said circuit court shall seem just, and the said appellees be condemned to pay to these appellants their costs and damages in the premises.

And these appellants will ever pray, &c.

Dated New York, February, 1st 1868.

C. VAN SANTVOORD,
Proctor & Advocate for Appellants.

265 We admit due service of a copy of the foregoing petition and appeal this 1st day of February, 1868.

ABBETT & FULLER,
Proctors for Libellants.

(Endorsed:) Circuit court of the United States for the eastern district of New York. The Steamer Cayuga, her engine, &c., The Hudson River Steamboat Co., claimants & appellants, vs. The Hoboken Land & Improvement Company. Petition & appeal. C. Van Santvoord, proctor for appellants. Filed February 3d, 1868.

266 THE STEAMER CAYUGA, HER ENGINE, &c., The Hudson River Steamboat Co., claimants & apellants,
vs.
THE HOBOKEN LAND & IMPROVEMENT CO., libellants & appellees.

JESSE HOYT, sworn:

I reside 239 West 34th st., New York. I own real estate in the State of New York, unencumbered, consisting of the house in which I live. I gave about 15,000 or 16,000 dollars for it. I signed a sheriff's bond some time ago for Mr. Nevins. He has told me since that it was all settled up. I don't recollect of being on any other bond, except in this case. I am now worth 12,000 over and above all my debts and liabilities. I own $100,000 worth of real estate in Oswego County.

JESSE HOYT.

ALFRED M. HOYT, sworn:

I reside at 40 West 37th st., N. Y. City. I am householder where I live, but don't own; therefore I own personal property. I don't own any real estate in New York State; I own real estate in Michigan, at Saginaw, in the township of East Saginaw or Buena Vista. I have owned it 10 or 12 years. I value it at $5,000 or $6,000; no incumbrance on it. I have personal property in the State of
267 New York, consisting of stocks and bonds. I have U. S. bonds to the amount of $5,000, probably, perhaps more. They are coupon bonds. I own $50,000 in 1st mortgage bonds of Winona & St. Peter's Railroad Company, *Minesota*. I have at least $20,000 cash and credit in business. My business is flour and grain dealer, of the firm of Jesse Hoyt & Co., 19 South st., New York City. My liabilities are nothing of any consequence. I hire the store where I do business. I hire it from year to year. I have been there about 14 years. I have no intentions of going out of the business at present. I am worth $30,000 over and above all my debts and liabilities.

ALFRED M. HOYT.

268 Circuit court of the United States of America for the eastern district of New York, in the second circuit.

THE STEAMER CAYUGA, HER ENGINE, &C., THE Hudson River Steamboat , claimants & appellants,
vs.
THE HOBOKEN LAND AND IMPROVEMENT COMpany, libellants & appellees.
} Bond for costs on appeal.

Know all men by these presents that we, Jesse Hoyt and Alfred M. Hoyt, are held and firmly bound unto the above-named The Hoboken Land & Improvement Company, libellants & appellees, in the sum of six thousand dollars, to be paid to the said appellees; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 10th day of February, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas, the above-named appellants have prosecuted an appeal to the circuit court of the United States to reverse the decision rendered in the above-entitled suit by the judge of the district court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JESSE HOYT.
ALFRED M. HOYT.

Sealed and delivered and taken and acknowledged this 10th day of February, 1868, before me.

CHA'S W. NEWTON,
U. S. Commissioner.

269 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Jesse Hoyt & Alfred M. Hoyt, being duly sworn, each depose and say that they reside in the city and county & State of New York, and that he is worth the sum of twelve thousand dollars over and above his just debts and liabilities.

JESSE HOYT.
ALFRED M. HOYT.

Sworn to this 10th day of February, A. D. 1868, before me.

——— ———.

(Indorsed:) Vol. ——, page ——. U. S. circuit court. The Steamer Cayuga, her engine, &c., The Hudson River Steamtb't Co., claimants & appellants, vs. The Hoboken Land and Improvement Company, libellants & appellees. Bond for costs on appeal. ——— ———, proctor. Filed this 10th day of February, 1868.

270 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this first day of June, in the year of our Lord one thousand eight hundred and sixty-eight, I, George F. Betts, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Andrew Foster, to testify and the truth to say, on the part and behalf of the appellants, in a certain suit or matter of controversy, now depending and undetermined in the circuit court of the United States for the eastern district of NewYork, at Brooklyn, wherein The Steamer

Cayuga, her tackle, &c., & Hudson River St'b't Co., appellants, ag'st The Hoboken Land and Improvement Co., appellees.

And the said Andrew Foster, being about the age of forty-nine years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Andrew Foster, and he did thereupon depose, testify, and say as follows, viz:

(Counsel for appellee makes a preliminary objection to the taking of this testimony on the part of the appellant as irregular and illegal, (1) because it is not permissable under the rules and the notice of appeal filed and served herein; (2) because no new allegations are made in the notice of appeal, and the witnesses noticed to be examined here have all been examined at length on the trial; (3) because the cause is on the appeal calendar, and duly noticed for argument.)

I was pilot of the Cayuga at the time of the collision with the James Watt in June, 1866, and was on duty at the time. I was exam-
271 ined as a witness on the trial in this case in the district court at Brooklyn. The collision occurred about 4 to 4½ o'clock p. m. When we came out from Desbrosses street, we rounded off in the river and went down to Herbert street; and then came head up the river along Herbert street—off the mouth of the slip—at Herbert street, for a boat. Didn't get the boat. In going into Herbert street, our engine was stopped; then started ahead again. At that time, our boat headed right up the river along the docks—a little outside the docks. After we started ahead, I rounded off in the river again as far as the middle of the river; I then went on down, down, till I stopped for the ferry-boat off Robinson street, as I judge. That was the first time the engine of the Cayuga was stopped after I left Herbert street. The engine of the Cayuga was not stopped, nor started ahead as we were rounding out into the river from Herbert street.

272 Q. When first after stopping and starting ahead again, as you were headed up the river off Herbert street, was the engine of the Cayuga stopped?

A. I stopped when I stopped for the ferry-boat, just before the collision, when I saw she was going to hit us. I slowed and stopped. After this last stopping, I did not back before the collision, because there was not time to ring the bells; it was a word and a blow. I did not reverse the engine. After this stopping, I did not start ahead again till after the collision. After this stopping, I did not start ahead again till after I had cleared her after the collision; I am quite sure of that. At the time I stopped, just before the collision, the Cayuga headed down the river a little towards the docks at the lower end of the city. We were then 8 or 10 piers below Hubert street, about off Robinson street.

Cross-examined by Mr. Fuller:

I did not go into the slip at Hubert street. I laid right straight up and down off the mouth of the slip. There was a jam of boats in the slip. There was 2 or 3 schooners in a bunch off a little below
273 Hubert street, waiting for their tow-boat. I can't say certain whether I rounded outside these schooners under their stern or not. I have no distinct recollection on that subject.

Q. Just before the collision, were you leaning forward and laughing?

A. I was not.

Re-direct:

Q. After slowing and stopping, just before the collision, did the engine remain at rest without motion till after the collision?

A. Yes, sir.

Q. Did you testify on the trial whether the engine was or was not started ahead again after being stopped, when you apprehended a collision?

(Obj. to.)

A. I testified that it was not.

Re-cross:

Q. Do you remember in answer to what question you so testified?

A. I think I do.

Q. What was it.

A. About starting up after the engine was stopped. It was not started ahead till after the collision?

ANDREW FOSTER.

274 Subscribed & sworn to this 1st day of June, 1868, before me.

GEO. F. BETTS,
U. S. Com.

275 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this first day of June, in the year of our Lord one thousand eight hundred and sixty-eight, I, George F. Betts, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Peter E. Post, to testify and the truth to say, on the part and behalf of the appellants, in a certain suit or matter of controversy, now depending and undetermined, in the circuit court of the United States for the eastern district of New York, at Brooklyn, wherein The Steamer Cayuga, her tackle, &c., Hudson River St'b't Co., appellants, ag'st the Hoboken Land & Improvement Co., appellees.

And the said Peter E. Post, being about the age of thirty-nine years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Peter E. Post, and he did thereupon depose, testify, and say as follows, viz: I was pilot of the Cayuga at the time of the collision with the James Watt in June, 1866. I was examined as a witness on the trial of this case in Brooklyn. The Cayuga, after leaving Desbrosses street, came around to Herburt street. She came out of Desbrosses street, rounded up to Herburt street, first going out into the river. She was headed up the river off Herburt street 100 *foot* or so from the dock at the Herburt street slip; might have been a little closer; she went there after a barge; she did
276 not get it, because the boat was jammed in the slip that we went after; our engine was stopped at Herburt street; started ahead again; then we were a little outside the docks off Herburt street, head-

ing up the river. Then she rounded out and headed down; after that, we did not stop her engine till just before the collision. I was standing on the Cayuga's port quarter right by the engine. After stopping the engine just before the collision, it was not started ahead again till after the boats hit, nor until they had cleared. When the engine stopped just before the collision, we were 10 or 11 streets below Herburt; I think off Robinson street.

Cross-ex'd by Mr. Fuller:

At the time of the collision I was standing aft of the paddle box, I had been there all the time since we left Herburt street. I was talking with the engineer. The engineer's room is about on a line with the paddle-boxes—a little forward of them. I think we rounded too outside the schooners that lay off Herburt street, and came under their stern.

PETER E. POST.

Subscribed and sworn to this first day of June, 1868, before me.

GEO. F. BETTS, *U. S. Com.*

277 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this first day of June, in the year of our Lord one thousand eight hundred and sixty-eight, I, George F. Betts, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil courts depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, John McCann, to testify and the truth to say, on the part and behalf of the appellants, in a certain suit or matter of controversy, now depending and undetermined, in the circuit court of the United States for the eastern district of New York, at Brooklyn, wherein The Steamer Cayuga, her tackle, &c., & Hudson River St'b't Company, appellants, ag'st the Hoboken Land and Improvement Co., appellees.

And the said John McCann, being about the age of twenty-one years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said John McCann, and he did thereupon depose, testify, and say as follows, viz: I was a hand on the Cayuga at the time of this collision with the Watt. I was examined as a witness on the trial in Brooklyn. I was aft on the starboard side before the collision. I ran forward before the boats hit. I heard one bell ring as I was stooping under the shaft, and another ring as I got to the gangway, & on the forward deck. The first bell was to slow, the second was to stop; that second bell couldn't be over a minute (if it was a minute) before the vessels struck—a very short time. The engine
278 was not started ahead again after being so stopped till the ferry-boat got clear of us. The engine had not been stopped before this since we left Herburt street. Don't know how long an interval that was

between the stoppage of the engine at Heburt street, and that just before the collision. I couldn't form any judgment as to how long a time that was.

Cross-ex'd by Mr. Fuller:

I think there were some schooners off Herburt street. I can't recollect whether we rounded inside or outside those schooners.

his
JOHN + McCANN.
mark

Subscribed & sworn to this 1st day of June, 1868, before me.
GEO. F. BETTS,
U. S. Com.

279 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this first day of June, in the year of our Lord one thousand eight hundred and sixty-eight, I, George F. Betts, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled, "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, George A. Huyck, to testify and the truth to say, on the part and behalf of the appellants, in a certain suit or matter of controversy, now depending and undetermined, in the circuit court of the United States for the eastern district of New York, at Brooklyn, wherein The Steamer Cayuga, her tackle, &c., Hudson River St'b't Company, appellants, ag'st the Hoboken Land and Improvement Co., appellees.

And the said George A. Huyck, being about the age of fifty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said George A. Huyck, and he did thereupon depose, testify, and say as follows, viz:

I was mate of the Cayuga at the time of this collision. I was examined on the trial of this case at Brooklyn. Before the collision I was sitting on the starboard quarter on the rail. I remained there till she hit; then I got up and walked forward. I didn't take notice in particular of the bells nor of the engine. I can't testify as to her stopping or starting before the collision. I walked forward after they hit. The Cayuga was then lying still. The ferry-boat had separated from us. Then
280 the Cayuga started ahead again.

Cross-examination waived.

G. A. HUYCK.

Subscribed & sworn to this 1st day of June, 1868, before me.
GEO. F. BETTS,
U. S. Com.

281 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this first day of June, in the year of our Lord one thousand eight hundred and sixty-eight, I George F. Betts, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, William R. Hoffman, to testify and the truth to say, on the part and behalf of the appellants in a certain suit or matter of controversy, now depending and undetermined in the circuit court of the United States for the eastern district of New York, at Brooklyn, wherein The Steamer Cayuga, her tackle, &c., & Hudson River St'b't Company, appellants, ag'st The Hoboken Land and Improvement Co., appellees.

And the said William R. Hoffman, being about the age of thirty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said William R. Hoffman, and he did thereupon depose, testify, and say as follows, viz:

I was engineer of the Cayuga, and on board of her at the time of the collision. I recollect her leaving Desbrosses street; we started to go to the East River. We stopped somewhere; I don't know at what street, at a place where we rounded to. We started up again there. I don't recollect how we headed at that time, nor how we went in there. After rounding to we stopped; then we started ahead again to go around the Battery, into the East River. After that the engine was not stopped till just before the collision with the ferry-boat. After stopping just before the collision, we did not start ahead again before we hit.

282 We did not start again till after the ferry-boat was clear. I was standing on the port guard, aft of the engine-room, about 12 or 14 feet distant from it, with Mr. Post.

Q. In your judgment how long an interval was there between the stopping and starting ahead again at the rounding to, and the stopping just prior to the collision?

A. About fifteen minutes.

Cross-examination waived.

W'M R. HOFFMAN.

Subscribed & sworn to this 1st day of June, 1868, before me.
GEO. F. BETTS,
U. S. Com.

283 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this second day of June, in the year of our Lord one thousand eight hundred and sixty-eight, I, George F. Betts, a

commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Orlando B. Titus, to testify and the truth to say, on the part and behalf of the appellants, in a certain suit or matter of controversy, now depending and undetermined, in the circuit court of the United States for the eastern district of New York, at Brooklyn, wherein The Steamer Cayuga, her tackle, &c., and Hudson River St'b't Co., appellants, ag'st The Hoboken Land & Improvement Co., appellees.

And the said Orlando B. Titus, being about the age of fifty-eight years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Orlando B. Titus, and he did thereupon depose, testify, and say as follows, viz:

Was captain of the Cayuga at the time of this collision. I am not now; I have retired from that business. I live at North Adams, Mass. I was on board of the Cayuga at the time of this collision, and in command of her. We came out from Desbros'es street, and went off into the river and rounded to; headed up the river at Herburt street. We went in there to get a barge. The barge was blocked in so that we could not get her, and we went around to the East River, intending to get the barge when we came back. At Herburt street we laid off the dock, and the engine was stopped; then I rung the bell to go
284 ahead, and I went and told the pilot we would go around to the East River, and when we came back that we would get the barge. At the time the engine was stopped and started ahead again at Herburt street, the Cayuga was headed to the northward, up the river. There were two schooners that lay at anchor about 100 yards off Herburt street, or a little above it; they were in our way and we had to go around them. In going into Herburt street we had to go under the stern of those schooners. We went outside of those schooners in coming from Desbrosses street to Herburt, and rounded under their stern and came up inside of them.

Q. After starting ahead from Herburt street, as the Cayuga was headed up the river, when was the engine of the Cayuga first stopped?

A. It was stopped half a second before the collision. The Cayuga was then in the middle of the river, about off North Moore street, heading down the river.

Q. After being stopped just before the collision, the engine was
285 not started ahead again till after the collision?

Q. After you left Hurbert street, heading up the river, was the engine of the Cayuga stopped or started ahead again as the Cayuga was rounding out into the river.

A. No, sir.

Q. Was there any stoppage or starting ahead of the Cayuga's engine

off Hubert street, except the stopping and starting as the Cayuga was head up the river?

A. No, sir. I was on the upper deck on the stern part of the boat, at Hubert street. There is a bell there aft, by which I started the engine ahead; it leads to the engine-room. I first saw the Watt when she was right under our bows. When one bell rung to slow, that called my attention, and I then saw the Watt under our bows. There was not over a second's interval between that bell to slow and our bell to stop very short, and the collision came pretty close, all at once, with our bell to stop. I was examined on the trial in the district court, at Brooklyn. I do not know where Connor (the ass't engineer) is.

Cross-examined by Mr. Fuller:

286 Q. How many bells did you yourself ring from the time you left De'brosses street until the collision?

A. I rung one.

Q. Which way was the Cayuga heading when you rang that bell?

A. Heading to the northward.

Q. Do you remember any point or object ahead of the Cayuga by which you can certainly fix her course at the time you rang that bell?

A. No, sir; I had no compass. It might have been northwest; it might have been nor'east. I was heading up the Hudson River.

Q. What was that bell which you rang; to slow, to stop, or to start ahead—the bell which you yourself rang?

A. To start ahead.

Q. Was the headway of the Cayuga perfectly stopped at any time between the time of you leaving De'brosses street and the collision?

A. Yes; when we laid headed up the river at Hubert street. I can't say that it was perfectly stopped.

287 Q. What bell did you hear rung between the time you left De'brosses street and the collision?

A. I heard a bell to slow and stop her at Hubert street. Then I rung a bell to go ahead; then after that the pilot rung the jingle bell to hook her on. This was at Herburt street, after I had told him to go around to the East River. The next bell I heard was just before the collision—one bell to slow her, and then another bell to stop her.

Q. Explain about the pilots ringing the jingle bell.

A. It is a small bell attached to the engine, to ring when you want to hook her on; it is different from the gong; the gong is a large bell; my hammer is attached to the gong; so is the pilot's hammer; I hook her on aft with the gong; I ring two bells to hook her on; the pilot does not ring the gong to hook her on; he rings the jingle bell; it does not make any difference to the engineer which of us rings the gong.

Q. Did you make fast at Hubert street?

A. No, sir.

288 Q. At Herburt street was your attention engaged in looking at the barge you *you* were to tow?

A. Yes, sir.

Q. Can you recollect from the time you left Desbrosses street until the collision, any fixed point or object ahead of the Cayuga?

A. No fixed object except the Watt under her bow, that I saw; I didn't take notice of anything.

Q. Did you bring the Cayuga out of Desbrosses street yourself?

A. The pilot brought her out. I did not.

Q. Were you on the stern of the Cayuga from the time you left Desbrosses street until the collision?

A. I was, and on the upper deck.
Q. How many streets is Herbert below Desbrosses?
A. The third street I believe.
Q. Then in coming out of Desbrosses street, rounding to outside of and under the stern of the schooners at anchor, and getting around into the river again, and straightening on you course down the river, you made a complete circle around these schooners, did you?
A. Yes, sir.
289 Q. During the time or a portion of the time that you were off Hubert street, or swinging around the schooners, as you have described, were you not engaged in looking over the stern of the Cayuga, and giving directions to your men in a yawl which was towing astern with the hawser which you had intended for the barge you were to tow?
A. Yes, sir; the yawl was attached to the Cayuga, and was not let go.
Q. What was the condition of the tide?
A. It was ebb tide—probably about half ebb.
Q. Running then about how many knots?
A. Pretty hard to tell in the Hudson River—about two and a half or two miles.
Q. Did you go into the slip at Hubert street?
N. No, sir.

Re-direct examination:

Q. What was the meaning of the bell which you rung at Hubert street?
A. It was to go ahead.
Q. To go ahead how?
A. For the engine to go ahead.
Q. If your bell meant to go ahead, why should the pilot ring his jingle bell?
290 A. If the pilot did not ring his jingle bell the engineer would work her by hand around to the East River.
Q. Then your signal meant work her ahead by hand?
A. Yes, sir.
Q. How long after your signal to work her ahead by hand was the pilot's signal by the jingle bell?
A. Probably a minute—a minute & a-half—two minutes; somewhere along there.

O. B. TITUS.

Sworn to before me this 2nd day of June, 1868.
GEO. F. BETTS,
U. S. Com.

291 Circuit court of the United States for the eastern district of New York.

THE STEAMER CAYUGA, HER TACKLE, &C., Hudson River St'b't Co., appellants,
ag'st
THE HOBOKEN LAND & IMPROVEMENT COMPANY, appellees.

Please to take notice that, pursuant to the rule in that behalf for the taking of proofs in a circuit court, upon an admiralty appeal, Andrew

Foster, John McCann, Orland B. Titus, John T. O'Connor, William R. Hoffman, & Peter E. Post, will be examined on the part of the appellants in the above-entitled cause, before me, (a commissioner duly appointed by the circuit court of the United States for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided,) at my office at the United States courts, 41 Chambers street, in the city of New York, on the first day of June next, at one o'clock in the afternoon on that day, at which time and place you are hereby notified to be present, and put interrogatories if you shall think fit.

Dated New York, the 29th day of May, A. D. 1868.

Yours, &c.,

292 GEO. F. BETTS,
United States Commissioner,
duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit.

action. That on the 29th day of May last he served a notice, of which the within is a copy, upon Abbett & Fuller, esqs., the proctors for the libellants in this action, by delivering the same to *er* J. A. Fuller, one of said proctors, at their office No. 229 Broadway, N. Y., & leaving the same with him.

JOHN B. PELL.

Sworn to before me this 1st day of June, 1866.

EDWARD L. OWEN,
Notary Public, N. Y. C'y.

(Indorsed:) Circuit court of the U. S., E. D. of New York. The Steamer Cayuga, her tackle, &c., Hudson River St'b't Co., appellants, ag'st The Hoboken Land & Improvement Company, appellees. Notice of examination witnesses. C. Van Santvood, proctor for app'l'ts.

293 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George F. Betts, a commissioner, duly appointed by the circuit court of the United States for the Southern District of New York, in the second circuit, under and by virtue of the act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witnesses' testimony is material and necessary for in the cause of action mentioned in the caption hereof, and that the witness live at a greater distance from the place of trial of

said cause than one hundred miles, and that the said cause, on appeal from the United States district court for the eastern district of New York, to the United States circuit court, held in & for said eastern district.

I further certify that due notification of the time and place of taking the said deposition, signed by me, was made out and served on the proctor for the appellees, to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit.

I further certify that, on the 1st & 2nd days of June, A. D. 1868, I was attended by the proctors for the appellants & appellees, and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me carefully examined and cautioned, and sworn to testify the whole truth, and the depositions were reduced to writing, in the presence of the witnesses, and from their statements, and after carefully reading the same to the witnesses, subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of filing the same with my own hand *to* the court for which the same were taken.

I further certify that I am not of counsel or attorney for either of the parties in said depositions and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof I have hereunto set my hand and seal this second day of June, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

GEO. F. BETTS,
U. S. Commissioner Circuit Court of the U. S. for the Southern District of New York.

294 (Indorsed:) U. S. circuit court for the eastern district of New York. The Steamer Cayuga, her tackle, &c., and Hudson River St'b't Co., appellants, ag'st The Hoboken Land & Improvement Co., appellees. Deposition on the part of the appellants. Taken before Geo. F. Betts, U. S. com., on the 1st & 2nd days of June, 1868. Filed June 5th, 1868.

295 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this fifth day of June, in the year of our Lord one thousand eight hundred and sixty-eight, I, George F. Betts, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, John T. O'Connor, to testify and the truth to say, on the part and behalf of the appellants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States

for the eastern district of New York, at Brooklyn, wherein The Steamer Cayuga, her tackle, &c., and Hudson River St'b't Co., appellants, ag'st The Hoboken Land & Improvement Co., appellees.

And the said John T. O'Connor, being about the age of thirty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John T. O'Connor, and he did thereupon depose, testify, and say as follows, viz:

I reside at Monroe, State of Connecticut, six miles west of Birmingham; my place of business is in Birmingham, which is on the Naugatuck Railroad; Monroe is a small village; I moved there May 1st, 1868, from New Haven; I had lived in New Haven a year before that; I was on the Cayuga at the time of the collision with the Watt; I was acting as assistant engineer, and I was at the engine; the Cayuga had come out from Desbrosse street; we came out into the river, and rounded to at Hubert street; I don't know what we went into Hurbert street for; I suppose for a boat; the engine was stopped at Hubert street after
296 rounding to; then it was started ahead again; the Cayuga was then headed about up the river, I should judge; I did not notice how she was headed at the time; I could not say whether at Hubert street we started up and stopped again to pick up a boat or not, whether we backed and filled their, working to get a boat or not; I don't recollect.

Q. When first, after starting from Hubert street, was the engine of the Cayuga stopped again?

A. Just before the collision with the ferry-boat.

Q. What bells did you get just before the collision with the ferry-boat?

A. I got two bells, one to slow and one to stop. These bells were obeyed. I couldn't say how long *or* interval there was between the bell to slow and the bell to stop. There might have been a minute; there might have been less. The next bell after that I got was a bell to go ahead. That was after the collision. The boats had cleared at that time.

Q. Did you start the engine ahead just before the collision after it had been stopped?

A. No, sir. It was not started ahead.

297 Q. How long a time, in your judgment, was there between the starting ahead at Hulbert street to the time when the bell was rung to slow just before the collision?

A. I said in my last testimony fifteen minutes, but I don't think it could have been as much as that.

Q. On reflection how long was it?

A. It might not have been ten minutes. I don't know how long it would take a boat to run from Hubert street, to round to, and to get to the position that we were in just before the collision. The Cayuga was headed down the river just before, and at the time of the collision. I felt the jar of the collision slightly.

Q. How long, in your judgment, was the time between the bell to stop just before the collision and the collision?

A. They came very close together; there wasn't more than an instant. I had been an engineer at that time 13 years on the *stream* tow-boats America, Niagara, New York, and Baltic. That is all.

Q. Have you observed the effect upon the water of a sudden stopping of the wheel?

A. The first effect is to cause a damming-up of the water in
298 front of the wheel, which checks the engine.

Q. Then when that damming-up falls away, what sometimes happens?

A. The headway of the boat's *course* the wheels to turn over. The water acts upon it as it does upon an undershot wheel, and that would start the engine. I have seen that happen. I have noticed it on the Alida, America, and a number of other boats.

Q. Do you know whether that happened on the Cayuga after the engine had been stopped by you just before the collision?

A. I do not, for I did not notice it in that particular case. I know that I did not start the engine ahead just before the collision, after stopping it, nor was it at that time started ahead by steam. I was examined as a witness on the trial in Brooklyn.

Cross-examined by Mr. Fuller:

Q. Under the circumstances stated in your last answers, would the wheels move if you held on to the starting bar?

A. They would not if I gave steam on the opposite side of the
299 piston. Merely holding on to the starting bar would have no effect.

Q. Can the wheels move without moving the engine?

A. They could not in that case, unless they were disconnected.

JOHN T. O'CONNOR.

Sworn to before me this 5th day of June, 1868.

GEO. F. BETTS,
U. S. Com.

300 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George F. Betts, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witnesses' testimony is material and necessary for in the cause of action mentioned in the caption hereof, and that the witness live at a greater distance from the place of trial of said cause than one hundred miles, and that the case is on appeal from the district court of the United States for the eastern district of New York the circuit court of the United States in the said eastern district.

I further certify that due notification of the time and place of taking the said deposition signed by me, was made out and served on the proctor for the appellees, to be present at the taking of the deposition and to put interrogatories, if he or they might think fit.

I further certify that, on the fifth day of June, A. D. 1868, I was attended by the proctors for the respective parties and by the witness who was of sound mind and lawful age, and the witness was by me

carefully examined and cautioned, and sworn to testify the whole truth, and the deposition was reduced to writing, in the presence of the witness and from his statements, and after carefully reading the same to the witness he subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of filing the same with my own hand in the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof I have hereunto set my hand and seal this fifth day of June, in the year of our Lord one thousand eight hundred and sixty-eight and of the independence of the United States, the ninety-second.

GEO. F. BETTS,
U. S. Commissioner Circuit Court of the U. S. for the Southern District of New York.

301 (Indorsed:) U. S. circuit court for the eastern district of New York. The Steamer Cayuga, her tackle, &c., and Hudson River St'b't Co., appellants, ag'st The Hoboken Land and Improvement Co., appellees. Deposition on the part of the appellants for ———. Taken before me, Geo. F. Betts, U. S. com., 5th day of June, 1868. Filed June 8th, 1868.

302 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this fifth day of June, in the year of our Lord one thousand eight hundred and sixty-eight, I, George F. Betts, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Thomas Smith, to testify and the truth to say, on the part and behalf of the appellees, in a certain suit or matter of controversy, now depending and undetermined, in the circuit court of the United States for the eastern district of New York, at Brooklyn, wherein The Steamer Cayuga, her tackle, &c., and Hudson River St'b't Co., appellants, ag'st The Hoboken Land & Improvement Co., appellees.

And the said Thomas Smith, being about the age of twenty-eight years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Thomas Smith, and he did thereupon depose, testify, and say as follows, viz:

I was captain and pilot of the Watt at the time of collision with the Cayuga; I was examined as a witness on the trial in Brooklyn; I saw one stoppage of the Cayuga's engine.

Q. Describe that stoppage.

A. When I first saw the Cayuga, she was swinging out into the river as though she had come from Dessbros es street where she had been laying all the afternoon, and when about opposite Herbert street about 300 or 400 yards out in the river, heading about for Jersey City—for the Central R. R. docks—she stopped her engine for about half a minute, and then started it ahead again.

303 Q. Did you notice when you first saw the Cayuga whether her engine was working fast or slow?

A. I should think it was working rather slow.

Q. Did you see the Cayuga's engine stop at the time of the collision?

A. No, sir.

Q. Just after the collision, did you notice whether or not the Cayuga's engine was stopped?

A. Yes, sir; I did.

Q. Was it stopped?

A. Yes, sir.

Q. Why didn't you see the stoppage.

(Obj't. to because it assumes that the engine was stopped. Q. withdrawn.)

Q. About the time of the collision were you in a position to see the Cayuga's engine?

A. No, sir.

Q. Describe why not?

A. I was in the pilot-house, and so far by the Cayuga that I couldn't see her engine. Instantly after the collision I stopped the engine of my boat & went aft to see what damage the Watt had received,

304 and then I noticed that the Cayuga's engine had stopped.

Cross-examined by Mr. Van Santvoord:

Q. Did you testify on your former examination that when you first observed the position of the Cayuga she was off your port quarter.

(Obt. to as not related to anything brought out on the direct examination.)

A. I couldn't say whether I did or not.

Q. Was it not the fact that when you first observed the position of the Cayuga that she was off your port quarter?

(Same obj't'g)

A. Not exactly—which quarter do you mean; on a ferry-boat there *is* two quarters on each side.

Q. Was it not the fact that when you first observed the position of the Cayuga she was off your stern port quarter as your are going to New York?

(Obj't. to as expressing a nautical absurdity—there being no such thing as a stern port quarter.)

A. I don't know, sir, as I can't answer that question; I will answer it; aft of the beam of the Watt.

Q. What do you mean by the beam of the Watt?

A. The same as any other vessel.

305 Q. Do you mean by that beam across amidships?

A. Yes, sir.

Q. Did you observe, yourself, more than one stoppage of the engine of the Cayuga before the collision?

A. No, sir.

Q. In stating that the engine of the Cayuga was started ahead again

after the stoppage, and before the collision, on what facts which you saw yourself do you make that statement?

A. From seeing the engine stop, I saw the beam stop of the Cayuga's engine, and her wheels stopped—her paddle-wheels; and I saw the Cayuga's beam and wheels start ahead again.

Q. What were you doing at the time that you saw the beam and wheels start ahead again?

A. I was attending to my duty steering and watching and looking out for danger.

Q. Which way was you looking?

A. As all other pilots do—I was looking towards the Cayuga.

Q. How long was that starting, which you saw, after the stop-
306 page of the Cayuga's engine, which you saw.

A. About half a minute—I should think about that—I couldn't tell.

Q. And how long after this starting, which you say you saw, before the collision?

A. I should think about two minutes and a half to three minutes.

Q. Is that not a very large estimate of the difference of time?

A. I should think not.

Q. In what position were you in reference to the Cayuga at the time you saw this starting of her engine?

A. I was about 300 yards on her starboard quarter—the Cayuga's.

Q. What do you mean by the Cayuga's starboard quarter.

A. I mean the right-hand quarter.

Q. Fore or aft?

A. Fore quarter.

Q. By fore quarter of the Cayuga do you mean her starboard bow?

A. Yes, sir.

Q. Assuming that the starboard side of the Cayuga aft is called her starboard quarter, and the forward part of the Cayuga or the starboard side is called the starboard bow, off which was the Watt, when
307 you say you saw the Cayuga's engine started after stopping.

A. Off the starboard bow. On ferry-boats we don't say starboard bow or port bow—we say fo'ward starboard quarter or fo'ward port quarter. We call the other quarter the after starboard quarter and the after port quarter.

Q. Did the Watt slow or stop her engine before the collision?

A. No, sir.

Q. How far would the Watt go at her then rate of speed if she didn't stop or back or slow, in what you call two minutes and a half?

(Obj. to; same obj. as before; it calls for mathematical calculation.)

A. I couldn't say.

Q. Towards what point of the New York side of the river was the Watt heading when off the starboard bow or starboard quarter of the Cayuga?

(Same obj.; nothing in direct examination calls for it.)

A. Liberty street.

Q. How many streets below Hubert street is Chambers street?

(Same obj.)

308 A. I can't tell; I don't know the names of the streets along there.

Q. Between the time when you saw the Cayuga's engine stop before the collision, and the time when you say her engine was started ahead again before the collision, was the Watt's course changed?

(Same obj.)

A. No, sir.

Q. When before that had it been changed, if at any time?
(Same obj.)
A. Not at any time after straightening down the river, after leaving the slip at Hoboken.
Q. What was the tide at this time?
A. Ebb.
Q. In leaving the slip on an ebb tide, is not your course first out into the river?
(Same obj.)
A. You get clear of the docks; yes, sir.
Q. Then is not your course down the river?
(Same obj.)
A. Slanting down; yes, sir.
Q. Not straight down?
A. No, sir.
Q. Then after this course—slanting down, not straight down—don't you turn again towards New York before entering the slip on the New York side?
(Same obj.)
A. After coming opposite the slip, then we turn to the eastward to enter the slip.
309 Q. On an ebb tide do you go a little below the slip before entering and sag up with the tide?
(Obj. to.)
A. We do go below, and head up against the tide to enter the slip—the Barclay street slip. Beacause there is a long pier on the north side and a short pier on the south side, in which respect, it differs from every other ferry slip that I know of in New York.
Q. Just before and at the time of the collision, was the Watt standing across the line of direction or the bow of the Cayuga?
(Same obj.)
A. Yes, sir; she was at the time or she wouldn't have hit me. The Cayuga was crossing her line.
Q. Before crossing the line of direction of the Cayuga, did you *calulate* to clear the barge without any collision?
(Same obj.)
A. I *calulated* to stop before the Cayuga stopped—but the Cayuga stopping, led me to believe that I could go on ahead without any danger.
Q. Then when the Cayuga stopped, did you calculate that you could clear her without any danger of a collision?
(Same obj.)
310 A. Yes, sir.
Q. Then is it your idea that the collision happened in consequence of the Cayuga's engine being started ahead after being stopped?
A. Yes, sir.
Q. How far do you think you would have cleared the Cayuga's stem if she had not started ahead again?
(Same obj.)
A. I should say about a hundred yards I should think, I should.

THOMAS SMITH.

Sworn to before me this 5th day June, 1868.

GEO. F. BETTS,
U. S. Com.

311

312 UNITED STATES OF AMERICA,
Southern District of New York,
City, County and State of New York, ss:

Be it remembered that. on this sixth day of June, in the year of our Lord one thousand eight hundred and sixty-eight, I, George F. Betts, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Charles Chamberlain, to testify and the truth to say, on the part and behalf of the appellees, in a certain suit or matter of controversy, now depending and undetermined, in the circuit court of the United States for the eastern district of New York, at Brooklyn, wherein The Steamer Cayuga, her tackle, &c., and Hudson River St'b't Co., appellants, against The Hoboken Land & Improvement Co., appellees.

And the said Charles Chamberlain, being about the age of forty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Charles Chamberlain, and he did thereupon depose, testify, and say as follows, viz:

I was a passenger on the Watt at the time of the collision with the Cayuga. I was examined as a witness on the trial in Brooklyn. When I first saw the Cayuga that day she was, I judge, 300 yards from us, probably more, heading down the river. I should judge, from the state of the tide, that she was running *toleralby* fast. I didn't see her engine stop, but before I lost sight of her around the angle of the cabin, I noticed her engine slow considerably. It would be impossible for one to answer more accurately, because from my position, she was com-
313 ing stem on till I lost sight of her. I was standing about the centre of the bow—some ten feet from the extreme end; at the time I noticed the Cayuga's engine slow, she was 200 to 300 yards off, to my best judgment; the boats working together, naturally made the distance less than when I first saw her. I did not see the Cayuga's engine stop at the instant of collision; that was impossible from my position. I did not see the Cayuga's engine stopped at any time.

Q. Was the Watt lower down the river than the Cayuga, from the time you first saw her until the collision?

A. Yes, sir.

Q. At the time you first saw the Cayuga, did she have ample opportunity to avoid the collision?

A. Most certainly, sir; without a doubt.

Cross-examined by Mr. Van Santvoo'd:

I never navigated a steamboat as a professional; as an amateur, I have had the wheel frequently in my hand on the boats between Hoboken and New York—on the ferry-boat.

Q. In your judgment, would the ability of the Cayuga to avoid the collision, as the Watt was standing across the bows of the Cayuga, de-

pend on the time required on the Cayuga to stop her headway through the water?

(Obj. to, because it assumes as a fact what the witness has not
314 stated, i. e., that the Watt was standing across the Cayuga's bow.)

A. In my judgment, the whole matter rested on the pilot of the Cayuga to avoid the collision, and he had plenty of time to do it.

(Q. repeated.)

A. No, sir.

Q. When you first saw the Cayuga, was the after part of the Watt, or the fore end, on which you were, nearer to the starboard bow of the Cayuga?

A. I should say the forward part of the Watt. It is a pretty difficult question to answer, lying as we were.

Q. Was the Watt, at the time you first saw the Cayuga, on the starboard bow of the Cayuga, working towards her?

A. Pretty near stern on, making the Watt pretty well in advance of the Cayuga when I first saw her.

Q. Toward what point on the New York side of the river was the Watt headed when you first saw the Cayuga?

A. I think our range would be pretty well with Trinity steeple.

Q. Was the Watt as far down as off Robinson street when you first saw the Cayuga, or how near down to Robinson, or off what street?

A. I think we were a little above Chambers street.

CHARLES CHAMBERLAIN.

Sworn to before me this 6th day of June, 1868.

GEO. F. BETTS,
U. S. Com.

315 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witnesses' testimony is material and necessary for in the cause of action mentioned in the caption hereof, and that the witness live at a greater distance from the place of trial of said cause than one hundred miles, and that the cause is an appeal from the U. S. district court for the eastern district of New York *to* the U. S. circuit court held in and for said eastern district.

I further certify that due notification of the time and place of taking the said deposition signed by me was made out and served on the parties for the appellants, to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit.

I further certify that on the 5th & 6th days of June, A. D. 1868, I was attended by the proctors for the respective parties, and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me carefully examined and cautioned, and sworn to testify the

whole truth, and the depositions were by me reduced to writing in the presence of the witnesses, and from statements, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of filing the same with my own hand *to* the court for which the same were taken.

I further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof I have hereunto set my hand and seal this sixth day of June, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

GEO. F. BETTS,
U. S. Commissioner Circuit Court of the U. S. for the Southern District of New York.

316 (Indorsed:) U. S. circuit court for the eastern district of New York. The Steamer Cayuga, her tackle, &c., &c., &c., appellants, ag'st The Hoboken Land & Improvement Co., appellees. Deposition on the part of the appellees for ———. Taken before me, Geo. F. Betts, U. S. com., 5 & 6th days of June, 1868. Filed June 8th, 1868.

317 Circuit court of the United States for the eastern district of New York.

THE STEAMER CAYUGA, HER ENGINES, &C., The Hudson River Steamboat Company*s* claimant and appellants,
ads.
THE HOBOKEN LAND & IMPROVEMENT COMpany, libellants and appellees.
} Case.

The claimant, the Hudson River Steamboat Company, having appealed from the decree made in favor of the appellees in the district court of the United States for the eastern district of New York, the cause came on to be heard anew in this court before the Honorable Lewis B. Woodruff, circuit judge, at a circuit court held for the eastern district of New York, at the city of Brooklyn, on the 16th and 17th days of May, 1870.

And on the hearing, the libel and answer being read, the counsel for the libellants read in evidence from the apostles, on the part of the libellants, the direct examination of the witnesses appearing therein to have been called for, the libellant and the counsel for the claim-
318 ant and appellant read in evidence the cross-examination of each and every of said witnesses from said apostles.

The counsel for libellants and appellees produced in evidence a diagram of the collision on a map made to scale by Albert Depuget, civil engineer, from surveys, as testified to by him, said diagram being the same referred and testified to in the examination and testimony of Thomas Smith and other witnesses on the part of the libellant, at the trial of the cause in the district court, as contained in their testimony, of which a copy is annexed. He also put in evidence "Rules and Regulations for the Government of Pilots," also used and referred to in the examination of witnesses on the trial of the cause in the district court. Said map and diagram and said "Rules and Regulations for the Gov-

ernment of Pilots" were both used and referred to by the counsel for the libellant on the argument before the said circuit judge.

And the counsel for said claimants and appellants read in evidence from said apostles, on the part of the claimants, the direct ex-
319 amination of the witnesses, appearing therein to have been called for the claimant; and the counsel for the libellant read in evidence the cross-examination of each and every said witnesses from said apostles.

The libellant's counsel also read in evidence from the apostles the direct examination of all the witnesses called for the libellant on the reference to assess damages, and the exhibits referred to in such examination.

And the counsel for the claimants read in evidence from said apostles the cross-examination of each and every of said witnesses.

And the counsel for claimants read in evidence from the apostles the direct examination of all the witnesses called for the claimant on the reference to assess damages.

And the counsel for the libellants read in evidence from said apostles the cross-examination of each and every of said witnesses.

The counsel for the claimant then read in evidence, on the part of the appellant, the direct examination, the counsel for libellants reading the cross-examination of the following witnesses from their respective depositions:

Andrew Foster	.....	Dep. 1 June, 1868.
Peter E. Post	.....	Dep. 1 June, 1868.
320 John McCann	.....	Dep. 1 June, 1868.
George A. Huyck	.....	Dep. 1 June, 1868.
William R. Hoffman	.....	Dep. 1 June, 1868.
Orlando P. Titus	.....	Dep. 2 June, 1868.
John T. O'Connor	.....	Dep. 5 June, 1868.

And the counsel for the libellant and appellees read in evidence, on the part of the libellants, the direct examination, the counsel for the appellant reading the cross-examination of Thomas Smith, dep. 5 June, 1868, and of Charles Chamberlain, dep. 6 June, 1868.

The appellant put in evidence a map by R. Rosa, civil engineer, from surveys with scales.

And therewith the evidence was closed, and the cause was summed up by the respective counsel, and submitted to the said circuit judge, who thereafter made his decree herein, dated July 2, 1870.

New York, July 5, 1870.

321 (Indorsed:) Circuit court U. S. The Steamer Cayuga, her tackle, &c. The Hudson River Steamboat Co., cl't & app'l't, vs. The Hoboken Land & Improvement Co., libellant & appellee. Case. C. Van Santvoo'd, proctor for cl't. Settled by consent. C. Van Santvoo'd, proctor for cl't. Abbet & Fuller, proc. for libellant. Filed Sept. 20th, 1870.

(Here follows map, marked page 321.)

322 United States circuit court, eastern district of New York.

THE HOBOKEN LAND AND IMPROVEMENT COMPANY, libellant & appellee,
versus
THE STEAM-TUG "CAYUGA," HER STEAM-ENGINE, boilers, machinery, tackle, apparel, and other furniture, The Hudson River Steamboat Company, claimant & appellant.
} In admiralty, on appeal.

This cause having been heard on the pleadings and proofs, on the appeal of The Hudson River Steamboat Company, claimant and appellant, from the final decree of the district court of the United States for the eastern district of New York, dated January 27, 1868, and having been argued by C. Van Santvood, esq., on the part of the claimant and appellant, and by W. J. A. Fuller, esq., on the part of the libellant and appellee, and due deliberation having been had thereon, it is now, on motion of Messrs. Abbett & Fuller, proctors for libellant and appellee, ordered, adjudged, and decreed by this court, that the said decree of the district court of the United States for the eastern district of
323 *court of* New York be, and the same is hereby, in all things affirmed.

And it is further ordered, adjudged, and decreed that the libellant and appellee recover of said steamer Cayuga, her steam engine, boilers, machinery, tackle, apparel and other furniture, or her said claimants, appellants, the sum of two thousand seven hundred and three dollars and forty-seven cents, being the amount of damages to the said libellant by reason of the collision in said pleadings mentioned, and the costs of the said libellant in said district court, as taxed in said court, amounting to three hundred and ninety-nine dollars and twenty cents, which it was adjudged by said final decree of said district court that the libellant recover against the said steam-tug Cayuga, her steam-engine, boilers, machinery, tackle, apparel, and other furniture, making in all the sum of three thousand one and two dollars and sixty-seven cents damages and costs.

And it is further ordered, adjudged, and decreed that said libellant and appellee recover against said steam-tug Cayuga, her steam-engine, boilers, machinery, tackle, apparel, and other furniture, or her
324 said claimants, as damages sustained by reason of said appeal of said claimant, the interest on the amount of said damages and costs so adjudged by said decree of said district court from the date of said decree in said district court aforesaid, (the 27th day of January, 1868,) to wit, the sum of five hundred and twenty seven dollars and eighty cents, besides its costs, on said appeal, to wit, the sum of three hundred and seventy-eight dollars and thirty-six cents, amounting together to nine hundred and six dollars and sixteen cents, all of which said damages, costs & interest, amounting in the aggregate to the sum of four thousand and eight dollars and eighty-three cents, it is hereby ordered, adjudged, and decreed that said libellant & appellee, The Hoboken Land and Improvement Company, recover of the said steam-tug Cayuga, her steam-engine, boilers, machinery, tackle, apparel, and other furniture, or of her said claimant, The Hudson River Steamboat Company.

And it is further ordered, adjudged, and decreed that unless an appeal be taken from this decree within the time prescribed by law, a summary judgment therefor be entered in favor of said libellant and appel-

325 lee against said steam-tug Cayuga, *Cayuga*, her steam-engine, &c., and her owners, claimant & appellant, and against The Hudson River Steamboat Company, Henry Smith and Jesse Hoyt, stipulators on the bond filed in said district court; and also against Jesse Hoyt and Alfred M. Hoyt, sureties on said appeal, in the sum of four thousand and eight dollars and eighty-three cents, with interest from the date of this decree, and that said libellant and appellee have execution therefor to satisfy the same.

Dated July 2nd, 1870.

L. B. WOODRUFF,
Circuit Judge.

326 (Indorsed:) U. S. C. C., E. D. N. Y. The Hoboken Land and Improvement Co., l'b't & appellee, vs. The Steam-tug "Cayuga," &c., cl't & app'l't. Decree. Abbett & Fuller, proctors for lib'l't, 229 Broadway, N. Y. Filed July 5th, 1870.

327 Circuit court of the United States for the eastern district of New York.

THE STEAMER CAYUGA, HER ENGINE, TACKLE, APparel & furniture, The Hudson River Steamboat Company, claimants & appellant,
ads.
THE HOBOKEN LAND & IMPROVEMENT COMPANY, libellant & appellees.

Take notice that The Hudson River Steamboat Company, claimants, hereby appeals to the Supreme Court of the United States from the whole and every part of the decree dated July 2nd, 1870, and entered in the above-entitled cause with the clerk of this court on or about the 5th day of July, 1870, in favor of libellants and appellees.

New York, July 7, 1870.

Yours, &c.,

C. VAN SANTVOOD,
Proct. for C'l't & App'l't.

To CHARLES W. NEWTON, Esq.,
Clerk of the Circuit Court.

ABBETT & FULLER, Esq.,
Pr's for Lib'l't & App'lee.

328 (Indorsed:) U. S. circuit court, E. D. of New York. The Steamer Cayuga, her engine, &c., ads. The Hoboken Land & Improvement Co., lib'l't & app'lee. Notice of appeal. C. Van Santvood, pr. for cl't & app'l't. Filed July 7th, 1870.

329 Supreme Court of the United States.

THE STEAMER CAYUGA, HER ENGINE, TACKLE, apparel, and furniture, The Hudson River Steamboat Company, claimants and appellants,
ads.
THE HOBOKEN LAND AND IMPROVEMENT COMCompany, libellants & appellees.

To the honorable the Supreme Court of the United States:

The petition and appeal of the above-named claimant and appellant,

showeth: That, on or about the first day of December, 1866, the above-named libellants filed their libel in the district court of the United States for the eastern district of New York, against The Steamer Cayuga, her tackle, engine, apparel, and furniture, and against all persons intervening for their interest therein, in a cause of collision, civil and maritime, in which libel it is alleged, and praying as therein contained, to which said libel the petitioner refers for its contents. That thereafter, on or about the 28th day of December, 1866, the said claimants having executed the necessary stipulations for costs and value, did file their
330 claim and answer alleging as therein contained, and insisting that the said steamer Cayuga was not liable for the damages claimed by said libellants, and praying that said district court would pronounce against the said libel, and condemn the said libellants in costs, as will more fully appear on reference to said answer, and to which for the contents thereof, these appellants ask leave to refer. That thereafter the said cause came on to be tried and to be heard before the Hon. Charles L. Benedict, sitting as judge of said district court, on the 18th, 19th, 25th, and 26th days of April, 1867, upon the allegations and proofs adduced by the respective parties, and said judge, on or about the 23d day of May, 1867, made a decretal order or sentence, bearing that date, that the libellants recover in said action against The Steamer Cayuga, her engine, tackle, &c., the damages by them sustained by reason of the collision in the pleadings mentioned, with costs to be taxed; and that it be referred to a commissioner of said court to ascertain and compute the amount of said damages, and to report thereon to that court, as by
331 reference to said decretal order will appear. That after proceeding with such reference before Samuel T. Jones, one of said commissioners, he made his report to said court, bearing date the 27th day of November, 1867, to which report exceptions were taken by these appellants; and thereafter, after argument on said exceptions, a final decree was made, bearing date January 27, 1868, overruling said exceptions, and confirming said report, and for the recovery by said libellants against said steamboat Cayuga, her tackle, &c., of the sum of two thousand seven hundred and three $\frac{47}{100}$ dollars, the amount reported due in and by said report, with interest from the 27th day of November, 1867, the date thereof, besides their costs, taxed at three hundred and ninety-nine $\frac{20}{100}$ dollars, making, in all, the sum of three thousand one hundred and two $\frac{67}{100}$ dollars, damages and costs, as will more fully appear by reference to said decree. That these appellants being advised that said decree of said district court was erroneous, insomuch that the said libel should have been dismissed with costs, and for that if the said libel-
332 lants were entitled to recover any damages, damages had been which should not have been allowed, appeal'd from said decree to the circuit court of the United States in and for the said eastern district of New York, and in their petition of appeal to said circuit court gave notice that on said appeal these appellants intended to seek a new decision on the facts on the pleadings and proofs, and other proofs to be produced in the circuit court, and to pray different relief; and they prayed in their said petition that the said decree, and every part thereof, might be reversed, with costs, or such other decree thereupon made, as to the said circuit court should seem just, and that said appellees should be condemned to pay to these appellants their costs and damages. That thereafter the said cause came on to be tried and to be heard before the Honorable Lewis S. Woodruff, sitting as circuit judge, in the city of Brooklyn, in said eastern district, on the sixteenth and seventeenth days of May, 1870, in the May term of said court, 1870, upon the allega-

tions and proofs adduced by the respective parties which had been transmitted on the said appeal to said circuit court, and upon the further proofs adduced by the respective parties which had been taken in said circuit court. And the said circuit judge having advised thereon, made his decree, bearing date the second day of July, 1870, and entered on or about the fifth day of July, 1870, with the clerk of said court, thereby affirming the said decree of said district court, and adjudging and decreeing, as therein contained, to which said decree these appellants refer for its contents. And these appellants are advised and insist that said decree is erroneous, insomuch that the said decree of said district court should have been reversed, and said libel dismissed with costs, and for that, if said libellants were entitled to a decree for any damages, damages have been which should not have been allowed.

And these appellants, for these and other reasons, appeal from the whole and every part of said decree of said circuit court to the Supreme Court of the United States, and they pray that the said decree, and every part thereof, may be reversed, and the libel dismissed with
333 costs, or that such other decree may be made as to the said Supreme Court shall seem just, and that the said libellants may be condemned to pay to these appellants their costs and damages in the premises.

And these appellants will ever pray, &c.

Dated July 8th, 1870.

C. VAN SANTVOOD.
Proctor & Advocate for Appellants.

334 (Indorsed:)

U. S. Supreme Court. The Steamer Cayuga, her engine, &c., The Hudson River Steamboat Co., claimant & appellant, ads. The Hoboken Land & Improvement Co., libellant & appellee. Petition of appeal. C. Van Santwood, proc. for cl't & app'l't.

Service of a copy of within petition of appeal is hereby admitted. New York, July 8th, 1870.

ABBETT & FULLER,
Pr's for Lib'l'ts & App'l'ees.

Filed July 8th, 1870.

335 By the Hon. Charles L. Benedict, one of the judges of the circuit court of the United States for the eastern district of New York, in the second circuit.

To The Hoboken Land and Improvement Company:

Whereas The Hudson River Steamboat Company, claimant of the steamer Cayuga, her engine, tackle, &c., has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the eastern district of New York, in the second circuit, made in favor of you, the said The Hoboken Land and Improvement Company against the said Steamboat Cayuga, her engine, tackle, &c., or her said claimant, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Brooklyn, in said eastern dis-

trict, in the said circuit, the eight day of July, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fourth.

CHA'S L. BENEDICT.

336 (Indorsed:)

U. S. Supreme Court. The Steamer Cayuga, her engine, &c., The Hudson River Steamboat Company, claimant & appellant, vs. The Hoboken Land and Improvement Co., libellant & appellee. Citation. C. Van Santvood, proc. for appellant.

Service of a copy of the within citation is hereby admitted.
New York, July 8, 1870.

ABBETT & FULLER,
Pro's for Lib'lts & Appellees.

Filed July 8th, 1870.

337 SOUTHERN DISTRICT OF NEW YORK:

Henry Smith, of the city of New York, being duly sworn, deposes and says: I own real estate in the city of New York worth from fifty to sixty thousand dollars. It is located at 147th, 148th, 149th streets, between 9th & 10th & 7th & 8th avenues, in the city of New York. There is no incumberance upon it; it is in my own name; and I own other property, and I am worth nine thousand dollars and upwards over and above all my just debts & liabilities.

HENRY SMITH.

Subscribed & sworn to before me this 8th day of July, 1870.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

338 SOUTHERN DISTRICT OF NEW YORK:

Jesse Hoyt, being duly sworn, says: I reside in the city of New York. I own real estate in N. Y., the house I live in, No. 239 West 24th street; it is worth the sum of twenty-five to thirty thousand dollars. There is no incumberance on it; it is in my own name. I am worth nine thousand dollars over & above all my just debts & liabilities.

JESSE HOYT.

Subscribed & sworn to before me this 8th day of July, 1870.

JOHN H. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

339 Circuit court of the United States of America for the eastern district of New York, in the second circuit.

THE STEAMER CAYUGA, HER ENGINE, TACKLE, &c., The Hudson River Steamboat Company, claimant and appellant,
vs.
THE HOBOKEN LAND AND INPROVEMENT COMPANY, libellant and appellees.

Damages.—Bond for costs.

Know all men by these presents that we, Henry Smith and Jesse Hoyt, are held and firmly bound unto the above-named The Hoboken

Land and Improvement Company in the sum of nine thousand dollars, to be paid to the said obligee, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the eight day of July, in the year of our Lord one thousand eight hundred and seventy.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such that, if the above-named appellant shall prosecute such appeal to effect, and answer all damages and costs if it fail to make its appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY SMITH.
JESSE HOYT.

Sealed and delivered, and taken and acknowledged, this 8th day of July, 1870, before me.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

340 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Henry Smith and Jesse Hoyt, both of the city of New York, being duly sworn, do depose and say, each for himself, that he is a freeholder in the city of New York, and that he is worth the sum of nine thousand dollars, over and above his just debts and liabilities.

HENRY SMITH.
JESSE HOYT.

Sworn to this 8th day of July, A. D. 1870, before me.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

The above bond approved as to form and sufficiency of the sureties.

CHA'S L. BENEDICT.

(Indorsed:) Vol. ——, page ——. U. S. circuit court, eastern district of New York. The Steamer Cayuga, her engine, &c., The Hudson River Steamboat Company, claimant & appellant, vs. The Hoboken Land & Improvement Company, libellant & appellees. Bond for damages costs on appeal to Supreme Court. C. Van Santwood, proctor for cl't & appellant. Filed this 8th day of July, 1870.

(Indorsement on cover:) No. 279. The Steamer "Cayuga," &c., The Hudson River Steamboat Company, claimant, appellant, vs. The Hoboken Land and Improvement Company. E. New York C. C. U. S. Filed 3d November, 1870.

U. S. Supreme Court.

The STEAMER, "CAYUGA," her ENGINE, &c., the HUDSON RIVER STEAMBOAT COMPANY,
Claimant and Appellant,

vs.

The HOBOKEN LAND and IMPROVEMENT COMPANY,
Libellant and Appellee.

Brief and Points of Appellants.

I.—Case of a collision on the Hudson River between the libellant's ferry-boat, "James Watt," on a passage from Hoboken, New Jersey, to Barclay Street, New-York, and the claimant's steam tug, "Cayuga," proceeding down the river after having left the upper pier of the Desbrosses Street Ferry-slip on the New-York side of the river, bound down and around the Battery into the East River, to take up boats to be towed by her to Albany, on the afternoon of June 13, 1866.

The case of the libellant as alleged in the libel, is found in Articles Third, Fourth and Fifth of the libel, in which it is alleged that the place of the collision between the "Watt," then steering a South-by-East course, and the "Cayuga," then heading about a S. S. W. course toward Jersey City, was about opposite Chambers Street in the City of New-York, and about one-third of the way across the river toward the Jersey shore.

The counter statement of the claimant of the "Cayuga," is found in the fourth and fifth Articles of the answer, in which it is alleged in substance, that on the afternoon of the day of the collision, the "Cayuga" left the pier where she took in water, above the Desbrosses Street Ferry-slip, and went out into the river, the tide being at that time and thereafter ebb, and rounded down and up the river, bound for a pier off Hubert Street (the 3d street below Desbrosses Street), for a boat there for which she had an order to take the same in tow. That when the "Cayuga" got off the said pier near enough to hail said boat to be taken in tow, the boat was found to be so jammed in that she could not get out of the slip where she was lying without great delay, and thereupon the "Cayuga," then heading up the river, rounded off into and down the river to go down the river and around into the East River to take up boats waiting for her there, to be towed up the Hudson; that in rounding from off the the pier at the foot of Hubert Street, out into the river, the "Cayuga" went well out into the middle of the river and then straightened down, and was proceeding down the river, when the "Watt" came down the river behind and off the "Cayuga's" starboard quarter, and well off toward the New Jersey shore, and was inclining toward the New-York side of the river; that the "Watt," as she was nearing and overtaking the "Cayuga," straightened down the river off to starboard of the "Cayuga," and going at a greater rate of speed than the "Cayuga," got ahead of the "Cayuga," and then sheered right across the bow of the "Cayuga" from a distance ahead of the "Cayuga" without stopping or reversing her engines, which was followed within a few seconds as a consequence of this movement of the "Watt," by the two steamboats coming together, the stem of the "Cayuga" striking against the port stern quarter of the "Watt" as she was crossing the bow of the "Cayuga," carrying away

the facing piece of the "Cayuga's" stem about six feet in length and about twelve inches wide to port, and at the same time ripping off a part of the wearing piece, plank shear and bucking piece and rail of the "Watt."

That before the sheer aforesaid of the "Watt" across the bow of the "Cayuga," which last was going down the river on the ebb tide, the two vessels were not on courses crossing each other so as to involve any risk of collision which was apparent, or which could have been apprehended by the pilot and persons navigating the "Cayuga," or with notice of which they were chargeable.

That immediately on observing said sheer of the "Watt," which was without any signal or previous notice to the "Cayuga," the "Cayuga's" bells were rung to slow and stop her engine, and were promptly obeyed; and just as the "Cayuga's" engines were stopped the two boats came together as aforesaid.

"That the "Cayuga" did all she could to avoid the collision after any reason on her part to apprehend danger of collision which happened, and the damages therefrom through the fault of the "Watt's" coming up from behind the "Cayuga," and passing her and sheering across her bow from so short a distance ahead as to render the collision unavoidable by the persons in charge of the "Cayuga."

That the place of the collision was near the middle of the river, and about off the foot of Robinson Street, (two or three streets below Chambers Street, which last is the eleventh street below Desbrosses, and the fourth above Barclay Street.)

II.—The above statement of the relative courses and bearings of the two steamers is sufficiently distinct to render unnecessary any diagram by the claimant of the rela-

tive courses and bearings of the two steamers previous to the first contemporaneous discovery by the pilots of each that there was risk of collision from continuance on their respective courses, which was immediately followed by the slowing and stopping of the "Cayuga's" engine, while the "Watt" forged ahead at full speed, and thereafter, for a comparison with the relative courses and bearings as indicated on the diagram on the map referred to at Fol. 321 of the case, prepared by the libellant apparently for the purpose of bringing the case within the application of Article 14 of the Steering and Sailing Rules of the Act of Congress of April 29, 1864.

An examination of the evidence will make it evident, we think, that the courses, bearings and distances as delineated on that diagram are suppositious; and that the diagram itself is of no more value as evidence than Courts of Admiralty are accustomed to give to plans and diagrams framed to exhibit the courses, bearings and distances of two vessels approaching each other, when framed merely upon the opinions or hypotheses of witnesses at variance with the facts in proof.

III.—To the facts of the case as above stated from the claimant's answer, which are regarded by the claimant as established by the clear weight of the evidence, as supplemented by the testimony taken in the Circuit Court, (fols. 220, 299,) the further facts, also established, as we claim, by the clear weight of the evidence, are to be added to complete the summary that after the "Cayuga's" engine was stopped from apprehension of danger of a collision as a precautionary measure down off Chambers Street, or below it, it was started ahead again after the collision and the boats had cleared, and not before.

IV.—Referring to the libellant's or Rosa's Map, shows the slip of the ferry at Hoboken half a mile above a point off opposite Desbrosses Street, and a mile and a quarter above off Barclay Street.

Chambers Street is half a mile below Desbrosses Street, and Robinson Street the third street below Chambers and first above Barclay Street.

Any point half way out or nearly half way out in the river on just leaving the Hoboken slip is above off Desbrosses Street, and from this point where the "Watt" was when first observed by the pilot of the "Cayuga," (Foster, fol. 116,) and where the "Watt" was when the pilot of the "Watt" first observed the "Cayuga," (Smith, fol. 41,) to a point off Chambers Street, where the collision occurred, is over a mile.

According to the indicator of the libellant's map, the course of the river is N. N. E. and S. S. W—Coast Survey or Rosa's Map, N. by E. and S by W.

Assuming the indicator on libellant's map to be correct, S. S. W. would be almost exactly straight down the river, and S. by E. would be crossing at an angle of three points.

But a course further down the river, keeping further off the New-York shore than S. by E., might be anywhere from S. S. W. or more to westward.

From the time when the "Watt" had left the point half way or nearly half way out into the river from the Hoboken slip, no witness on the "Watt" appears to have observed the "Cayuga" until the "Cayuga's" engine was stopped close to the place of the collision, by reason of the observed change of direction of the "Watt" from a direction parallel or nearly parallel to that of the "Cayuga" across her bow in such close proximity that the collision followed on this movement.

V.—Giving its due weight to the testimony of the witnesses on the part of the libellant as to facts testified to by them, which shall appear on examination of their testimony to have been constructed or imagined after the event; and discriminating between facts testified to from observation and those to which they may have been led by strong leading or in other ways, or from conjecture, or from a process of exculpatory reasoning, and to contradictory statements in their testimony; and valuing, at their true worth, mere opinions as to bearings and distances, which are inconsistent with admitted facts, it will, we think, be found that what of conflict there is in the testimony with the evidence upon which the facts alleged by the claimant rests, is entitled to but little consideration.

VI.—The witnesses and the testimony. The only witnesses from the crew of the "Watt" are,

(a.) Thomas Smith, the master and pilot at the time; fols. 40, 61, and in the Circuit Court Dep., June 5th, 1868, fols. 302, 34.

(b.) Mott Birdsall, who was with him at the wheel in the pilot house of the "Watt," fols. 69, 80.

(1.) Thomas Smith.

He testifies (fols. 308, 309) that on leaving the Hoboken slip, on an ebb tide, his course is first out in the river, clear of the docks, then slanting down, not straight down, then after this course slanting down, not straight down, after coming opposite the slip, (Barclay Street slip,) then we turn to the eastward to enter the slip. We go below the slip and head up against the tide, to enter the slip—the Barclay Street slip.

That just before, and at the time of the collision, the "Watt" was standing across the line of direction of the

"Cayuga;" that before crossing the line of direction of the "Cayuga," he calculated to stop before the "Cayuga" stopped; but the "Cayuga" stopping led him to believe that he could go ahead without any danger.

At fol. 41. We had just left Hoboken to go to Barclay Street. When about half way, or nearly half way, out in the river, I perceived the "Cayuga" coming on the New-York side. She ran out in the river, and steered down to the southward. I still kept my course, and afterward we got on near the "Cayuga;" the "Cayuga's" engine stopped suddenly when about opposite Hubert Street, or a little below. Then, of course, seeing her stop her engine, I thought I had a right to go ahead, which I did. She only stopped for a moment, when she started ahead again. I then blew one blast of the steam whistle for her to pass under my stern. I was then heading about south-east or east-by-south, and the "Cayuga" was heading about south-south-west.

He continues—When opposite Chambers Street, or a little below, she ran into the "Watt" on her port side stern quarter, pushing the stern of the "Watt" round, so as to head her up the river.

In fol. 41, he testifies that her general course *from his slip in Hoboken to* the Barclay Street slip is about south south-east, but he was not steering about that course, but further down the river, keeping further off the shore—further down and off than south by east.

The admission of a change of direction from his general course from his slip in Hoboken to Barclay Street, further down the river, keeping further off the shore to a course about south-east or east by south, at the time the "Cayuga's" engine was stopped, furnishes the sufficient reason for the stopping of the "Cayuga's" engine, in conformity to the testimony of the "Cayuga's" pilot, and accounts for the "Watt's" pilot first discovering, (fol. 309) just before the

"Cayuga's" engine stopped, that there was danger of a collision if both continued.

A comparison of the testimony of the "Watt's" pilot in this passage with that of the "Cayuga's (fols. 116, 117,) will show their correspondence.

After this passage in the testimony of the "Watt's" pilot, above recited, from fol. 41 to 42, in which the pilot had told his own story in his own way, the libellant's counsel came to the rescue with the diagram as in 42.

Look at this diagram, &c.

Then follows the passage in which he testifies, in answer to the question when her engine stopped were they about the same as the positions in that drawing.

A. I should think that was about right, &c. Read this into 44.

Let us see about this.

In fol. 44 he is asked the question: You have stated that you kept your course. What would be the effect in the situation that you were when the "Cayuga" started her engine ahead, of porting her helm? (See as to time of this supposed starting ahead, fol. 41.)

A. It would have made the matter worse.

Q. Worse or more certain?

A. By porting my helm it would have swung the stern of the "James Watt" more around in contact with the "Cayuga," and cut her a great deal more.

Q. If the relative position had been such as in the diagram, or as in situation five, could that have been so?

In fol. 45, on page 18, is another passage.

Q. Was the wheel-house of the "James Watt" in the best position for looking out?

A. Yes, sir.

Q. When the "Cayuga" stopped, which window did you look through?

A. I looked through the *back* window.

Is any one to believe that in the positions on the diagram when the "Cayuga's" engine stopped he could see the "Cayuga," looking through the back window?

At fol. 53 he testifies that between the time of the stopping of the "Cayuga's" engine and the collision it was not more than half a minute; he supposes it might have been three-quarters of a minute, and at fol. 54, that it might have been, he supposes it was, a little more than a minute.

It was in this interval that he supposes the "Cayuga's" engine was started ahead again, after being stopped. Did he see it start ahead again? At fol. 55, he says he saw the wheel revolve ahead down the river after she stopped that time.

Q. What was you doing at that time?

A. Steering and looking out.

It would be unprofitable to collect the numerous singular statements and contradictions in the testimony of this witness, such as his statement at fol. 55, that the only time his wheel was put a-starboard was when he first came out of the slip, &c.

(2.) Mott Birdsall, wheelsman, at the wheel with Smith, fol. 69 to 89.

He says, at fol. 69, he saw the "Cayuga" coming out in the river astern of us; she came out and swung down the river some, and then stopped perfectly still her engines and wheels, and we kept our course ahead, and she started ahead again right away, or in a short time, and she came on down, gaining on us a little; we blew one whistle for her and there was no answer heard from her, then she came on down and the consequence was hit us.

That the "Cayuga" was distant from the "Watt" he should judge about 300 yards when her engine stopped. At fol. 72, he swears by the diagram.

In his testimony further on (fol 74,) he testifies that the "Watt" was going across the direction of the "Cayuga" when he first saw it, and at fol. 46, that the whistle was blown but a short time before the collision, a little more than one-half a minute, he guessed. In answer to the question by the Court, fol. 79, what side of her (the "Cayuga,") did you first see when your eye dropped on her?

A. I don't know as I could say. I think when I first saw her I could see her port wheel first, I guess about first.

(It should be observed that all previous to that, as to relative course or bearing, or stopping or starting of the engine of the "Cayuga," so far as his testimony is concerned, could only be from information or imagination. He does not say he saw it stop or start ahead.)

(3.) John Dewald, the carman, in the middle of the boat, (Fols. 90 to 92,) shows in his testimony that a collision was apprehended by him, just as the "Cayuga's" engine stopped; and he testifies to a starting ahead of the engine after that, in connection with a turning by the pilot of the "Cayuga" of his wheel, as fast as he could.

Although this testimony imports, when taken by itself, that the "Cayuga's" engine was started ahead before the collision, yet on the proof from both sides that the pilot of the "Cayuga" did not turn his wheel at all before the collision, (Birdsall, fol. 72 Foster, fol. 127), and in connection with such proofs, it tends to show that the starting ahead was after the collision and the boats had cleared, and not before.

(4.) John L. Brown, Master and Pilot of the "Hoboken," (fols. 62–63.) He saw the "Cayuga" coming down the

river, and the "Watt" going partly across the river, to her slip. He did not see her stop her engine until she struck. After she struck she got on her course, and went on. He was in a position for seeing everything that took place. When he first saw the boat the collision was imminent. (Fol. 65.)

(5.) Stopping the engine would not stop the headway of the boat in the water at once; and it is conceivable that the action of the water on the paddle-wheels may have turned the wheel a little, and started the beam a moment after first stopping the engine; and that this movement, if seen by the pilot of the "Watt," may have suggested to him the idea that the engine was started ahead after being stopped, and before the collision; but that anything so extraordinary as the statement—that the pilot of the "Cayuga," who stopped his engine from apprehension of a collision from the movement of the "Watt" across his line of direction, should have started his engine ahead again during the progress of the movement which led him to stop—should be credited against the testimony of the Pilot, Engineer and officers of the "Cayuga," to the contrary, is extraordinary.

The cause was argued in the District Court, at an adjourned day, after the testimony was closed and the witnesses dismissed; and on the argument the point was strongly urged that the starting ahead of the "Cayuga's" engine must be taken as admitted, as it was not denied in the evidence on the part of the claimant; and on examining the stenographer's minutes, no trace could be found of any inquiry to a witness from the "Cayuga" as to this.

To remove this defect or omission, the following witnesses were recalled, and their depositions taken to this point in the Circuit.

Andrew Foster dep., 1 June, 1868, fols. 270 to 274.

Peter E. Post dep., 1 June, 1868, fols. 275, 277.

John McCann dep., 1 June, 1868, fols. 277-278.

George A. Huyck dep., 1 June, 1868, fol. 279.

William R. Hoffman, engineer, dep., 1 June, 1868, fols. 281 to 282.

Orlando B. Titus dep., 2d June, 1868, fols. 283, 290.

John T. O'Connor, engineer, dep., 1 June, 1868, fols. 295, 299.

In these depositions the circumstances of the stopping and starting ahead of the "Cayuga's" engine off Hubert Street, on going in there for a boat, and coming out again, are more clearly stated than in the minutes on the trial, but in entire harmony therewith.

And these depositions, it is submitted, establish the fact that the "Cayuga's" engine was not started ahead after stopping to avoid risk of a collision.

(7.) The remaining witnesses from the "Watt" are:

A. L. Dupuget, Civil Engineer, fol. 34-40.

Charles Chamberlain, gauger, fol. 80-90.

William Ketcham, expressman, fol. 92, 97.

Harvey H. Brown, Collector of Claims, fol. 97-99.

Isaac H. Alling, on his cart, aft, fol. 99-101

William Brown, farmer, fol. 101, 102.

Nathan Hydecker, manufacturer, in cabin, fol. 102.

Dupuget, Chamberlain, William Ketcham and Harvey H. Brown were on the forward part of the "Watt."

The testimony of these witnesses from the "Watt" shows that the blowing of the steam whistle on the "Watt," which they heard, was just as the "Watt" was crossing in front of the "Cayuga," in the imminency of the collision, and that it accompanied that movement. It gave notice of nothing, therefore, of which the "Cayuga" was not notified by the movement.

It was not a signal to which an answer was waited for, or which called for an answer, or which tended to justify the movement of the "Watt."

The signal by the steam whistle, provided for in the rules of the supervising inspectors, to which an answer is required, is a signal of an intended course, and to be followed, if not answered, by several short and rapid blasts of the steam whittle.

It appears from the testimony of all these witnesses, that their attention was called to the "Cayuga" by a blowing of a steam whistle on the "Watt," and that then, and when they first saw the "Cayuga," the "Watt" was crossing directly ahead of the "Cayuga" as she was heading down the river, so that they could not see either side of her.

Of the relative position of the steamers before seeing the "Cayuga," of course they could know nothing.

Their estimated distance of the "Watt," in yards, below the "Cayuga," cannot be reconciled with the apprehension all felt that the collision which followed was imminent when they first saw the "Cayuga."

From the time when the witnesses, who were forward on the "Watt," first saw the "Cayuga," as the "Watt" was crossing the "Cayuga's" line of direction, directly ahead of her, followed immediately by the view of the "Cayuga" being intercepted by the joiner work in front of the cabin, to the time of the collision, within 10 to 25 feet from the aft end of the "Watt," the "Watt" could have forged ahead at most only the distance from the place of the witnesses forward (20 feet from the forward end of the "Watt") to 10 to 25 feet from her stern, a distance of less than 150 feet, the length of the "Watt" being 180 feet.

Now, if the "Cayuga" came from a distance of 1,000 or 1,200 feet while the "Watt" was moving less than 150 feet, the "Cayuga" must have been moving more than six times faster than the "Watt."

Calling the rate of speed of the "Watt" 10 knots, the "Cayuga" must have been moving at 60 knots and upward.

It being shown that these estimates of distance of these witnesses, formed under the sense of an impending collision, are altogether mistaken, if not afterwards merely supposed, the judgment of any of them, founded upon or influenced by these estimates, that the "Cayuga" could have avoided the collision by stopping or porting, fails; and further, throwing out these estimates of distance, there is nothing in the testimony of these witnesses in conflict with that of the witnesses from the "Cayuga," showing that the "Watt," in passing the "Cayuga," crossed her bow in close proximity to the "Cayuga," and so close as to cause the collision.

(8.) A ferry-boat has lighter engines, and her steering-gear is necessarily rigged taut, so as to sheer quick by the mere rolling of the wheel a little, to avoid objects in her way in a crowded harbor.

A boat like the "Cayuga," built for tugging fleets of boats, has a heavier engine, and there being a strain on the rudder in sheering, the barrel of her steering-wheel, on which her chain winds, is necessarily smaller to get more power, but upon a known principle of mechanics, at a loss of time. Hence more turns of the wheel are necessary to take up the slack on beginning to sheer, and to effect a change of direction.

To set up the opinions of the witnesses from the "Watt," who had no experience in navigating any boat, or no experience except on a ferry boat as to the time required to back the engine of the "Cayuga," or to effect a sheer, against the opinion of persons who had experience in her navigation, is not reasonable.

See Peter E. Post as to this.

(9.) On any usual mode of weighing evidence the testimony of the witnesses from the "Cayuga," to her rate of

speed in going round to the East River, with low steam, to prevent the necessity of blowing off steam, while waiting to pick up her tow, 7 to 8 miles an hour—a rate less than the admitted rate of the "Watt"—should outweigh the testimony from the "Watt" as to the "Cayuga's" rate of speed.

(10.) The remaining witnesses of the libellant are John L. Brown, Pilot on the "Hoboken," going from Barclay Street to Hoboken (f. 111 to 113), Elijah F. Brown, deck-hand, (f. 104 to 111.)

John L. Brown, recalled.

It is evident that these witnesses did not see either boat until the "Watt" had overtaken and passed the "Cayuga" and was crossing her bow in the imminence of the collision.

The testimony of Elijah F. Brown to the "Hoboken" passing between the "Cayuga" and "Watt" is contrary to the statement of John L. Brown, when first called, and the testimony of the pilot of the "Cayuga." John L. Brown's subsequent agreement with Elijah F. Brown against his own impressions, certainly shows facility.

It is incredible that the "Hoboken" passed as testified to by Elijah F. Brown, without being observed by witnesses on the "Watt" or "Cayuga."

The testimony of these witnesses from the "Hoboken" to relative speed of the boats as to distance off of the "Cayuga" and "Watt" estimated from the "Hoboken" going up behind both boats under the circumstances, or on the principle of accommodation to the view of their side of the case, exemplified by the conformity of John L. Brown when recalled against his own impressions to the statement of Elijah F. Brown as to the course of the "Hoboken," are of no value as evidence.

VII.—Whether the "Cayuga" was heading S.S.W., which is one point west of straight down the river, or more towards Governor's Island, when sighted at any particular time is not material. Her course was down the river bound for the East River, and that was known to the pilot of the "Watt" (fol. 47).

For distinction between course and direction at time sighted or at a given time—See the Velocity, 3 Privy Council Appeals, 45.

VIII.—It is proved by the witnesses from the "Cayuga," the only witnesses who testify from observation at the time, to the relative courses and bearings of the two vessels from the time the "Watt" was first seen from the "Cayuga," off the "Cayuga's" starboard quarter, half way out to the middle of the river from Hoboken, that after the "Cayuga" had rounded out into the middle of the river and was proceeding down the river, bound for the East River, the "Watt" was off her starboard quarter bound down and bearing on the "Cayuga's" starboard quarter; as the "Watt" neared the "Cayuga," she straightened down off the starboard side of the "Cayuga," about in line with her and going somewhat faster, about two lengths off the "Cayuga's" starboard side, and so continued until her stern was about in a line with the "Cayuga's" stem, when she crossed ahead of the "Cayuga." As soon as the pilot of the "Cayuga" saw he was going to cross, he rang the bell to slow and stop, and these signals were obeyed, and then the boats were afoul before the "Cayuga" could do anything else to avoid the collision.

1. Andrew Foster, the pilot, fols. 115–130.

As to relative courses, fols. 116, 118.

The engine was not backed because the blow came too quick, fol. 118.

Rate of speed, fol. 119.

No reason to suppose she was going to cross "Cayuga's" bows, fol. 120.

That the effect of putting her helm to port on the course the "Watt" was standing when she crossed, would have been to run into her, and was no time to do it, and could not have done anything to clear her that he did not do. Fols, 127–128.

See Gray on Regulations to Prevent Collisions at Sea, Diagram 4, p. 13, sec. 40.

2. George A. Huyek, the mate, on aft, fols. 130 to 135 to 142.

3. John McCann, a deck hand on the "Cayuga," fols. 143 to 147, 147 to 152.

4. Orlando B. Titus, master of the "Cayuga," fols. 153 to 159.

5. John T. Conner, engineer, fols. 159 to 166.

6. William R. Hoffman, engineer, fols. 166 to 170.

7. Peter E. Post, a pilot on the "Cayuga," not on duty, fols. 170 to 175.

8. Andrew Foster, recalled, fols. 177 to 179 See fols. 178, 179.

9. William W. Betts, master of the "Champion," who saw the collision from a Jersey City ferry boat. His testimony from fols 180 to 191.

There is a line at fol. 188 which needs correction—"Saw the 'Watt' slow her engines," should be, the "Cayuga," &c.

The further testimony taken in the Circuit Court, has been referred to above.

IX.—In determining the merits of a cause of collision, the Court will look chiefly to the facts in proof, and will pay but slight attention to the opinions and hypotheses of witnesses, especially those of each ship's company, in respect to the other.

Plans and diagrams framed to exhibit the courses, bearings and distances of the two vessels approaching each other, are of no value as evidence where framed merely upon the conjecture or opinion of witnesses, as to speed, relative bearing and distances of the vessels.

Judge Betts in case of the "Narragansett," 1 Olcott, 246.

X.—By the general maritime law, where two ships or vessels are moving in the same general direction, the hindermost must have a care to avoid the one putting out before her.

Jacobsen's Sea Laws, 338.

The cases of the Governor. 1 Abbott's Admiralty Rep. 108; the Rhode Island, 1 Olcott, A 505, and the Thomas Sparks, 18 How., Pr. R. 20, are cases of the application of this rule to collision between steam vessels.

In the case of the Governor, it wcs held that where two vessels are running in the same direction, the one astern of the other, there rests upon the rear vessel an obligation to exercise precaution against collision, which is not chargeable to the same extent upon the other.

And that a vessel in advance is not bound to give way or to give facilities to enable a vessel in her rear to pass her, though she is bound to refrain from any maneuvre calculated to embarras the latter in attempts to pass.

The decisions in the other two cases are to the same effect.

The rule followed in the above cases is established and extended by Articles 17 and 18, of the Act of Congress of April 29th, 1864, providing that every vessel overtaking any other vessel, shall keep out of the way of the said last mentioned vessel, and that where one of two ships is to keep out of the way, the other shall keep her course.

XI.—If Article 14, of the sailing rules, has any application to the circumstances of this case, it did not come into play until the "Watt," just before the "Cayuga" stopped,

stood across her bow, and the "Cayuga" was withou as she did what she could to avoid the collision; but submitted that it does not apply to the case of a vessel co ing up from behind, overtaking and passing along off t starboard on a course not involving risk of collision, until such risk is produced by the overtaking vessel cutting across the other's bow in dangerous proximity. The true rule applicable to this case is the 17th.

The Wheatsheaf *vs.* the Intrepid, Holt's Rule of the Road, 210.

XII.—As between the "Watt" and "Cayuga," the "Watt" should have gone under the "Cayuga's" stern, or after straightening down off along the side of the "Cayuga" should have continued far enough down the river to make it safe to cross without requiring the aid of precautionary measures on the part of the "Cayuga" to avoid a collision, and in not doing so was guilty not merely of negligence but of positive misconduct which should deprive her owners of any right to hold the 'Cayuga" responsible for the consequences of an omission to use such measures or other act of omission, except forbearance, to do anything intentionally to embarrass the "Watt" in passing.

XIII.—The exception to the allowance of $75 a day for loss of use of the "Watt" during repairs, was well taken.

In the English Admiralty loss of profit, that is net profit, which might have been earned during repairs, have been considered admissible on production of books and vouchers to show what the vessel had actually earned in former voyages in which she had been engaged, but not on mere estimate or statement, although corroborated by affidavit.

The "Hebe," 2 W., Rob. 535–536.

On the principle that the owner is simply to be indemnified for his actual loss, it has been determined that if a vessel, for example a steam packet, which sets off on stated

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stood across her bow, and the "Cayuga" was without fault as she did what she could to avoid the collision; but it is submitted that it does not apply to the case of a vessel coming up from behind, overtaking and passing along off to starboard on a course not involving risk of collision, until such risk is produced by the overtaking vessel cutting across the other's bow in dangerous proximity. The true rule applicable to this case is the 17th.

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days, usually lies idle for a given time, this time if it has been occupied in repairing damages, is not to be paid for.

"Black Prince," 1 Lush., 574.

In our Courts the loss of profit is not allowed.

"The Amiable Nancy," 3 Wheat., 560.

Williamson *vs.* Barrett, 13 How. R., 111, holds that the measure of the recovery is the price for which the vessel could have been hired or chartered in the business in which she had been usually employed—the market price for which she could have been hired.

Before that case the usual rate of demurrage in the usual employment was and is still allowed.

"The Rhode Island," 6 N. Y. Legal Ob., 105; S. C., 3 Blatch., C. C. R., 113.

In the absence of proof of such rate, interest on the value of the vessel was allowed.

In this case, there being no proof of loss of profit, or of any actual loss while the boat was undergoing repairs, and no proof that she could have been hired or chartered at the time for any price, nor that there was any demand for boats of her size and class at the time the libellants were allowed $75 a day during repairs, on the mere opinion of the superintendents of the three leading ferries in New-York harbor, that she ought to have so much, without vouchers or facts to support it.

See the testimony, 200 to 208, Palmer.
229 to 232, Shippen.
232 to 234, Woolsey.
234 to 238, Smith.
238 to 241, Garlick.
241 to 243, Hy. Smith.
243 to 244, Loughlin.

C. VAN SANTVOORD,
Counsel for Claimants.

Supreme Court of the U. S.

No. 279.

THE STEAMER "CAYUGA," ETC.,
THE HUDSON RIVER STEAMBOAT COMPANY,
Claimant, Appellant,

vs.

THE HOBOKEN LAND AND IMPROVEMENT COMPANY,
Libellant, Appellee.

APPEAL

from the Circuit Court of the United States for the Eastern District of New York.

FILED NOVEMBER 3, 1870.

BRIEF and POINTS

FOR THE HOBOKEN LAND AND IMPROVEMENT COMPANY,
Libellant, Appellee.

ABBETT & FULLER,
Of Counsel for Libellant and Appellee,
229 *Broadway, N. Y.*

NEW YORK:
JOHN POLHEMUS, PRINTER, 102 NASSAU STREET.
1871

STATEMENT OF FACTS.

Page. Fol.

On the 13th day of June, 1866, at four o'clock in the afternoon, in clear weather, a collision occurred between the libellant's, appellee's steam ferry boat "James Watt" and the claimant's, appellant's steam tug-boat "Cayuga." The "James Watt" was making her regular trip from Hoboken, New Jersey, to her slip at the foot of Barclay street, New York. The "Cayuga," at about the same time, or very soon after, left her slip at Desbrosses street, New York, rounded to and made a circuit round some vessels off Hubert street, New York, and then took a course down the river. The two steamers proceeded on their respective courses, on converging lines, which, if continued, must have intersected and made a collision inevitable. The circumstances of the collision are alleged in articles third, fourth and fifth of the libel, and the counter statement in the fourth and fifth articles of the answer.

2 6 (Libel.)
10 25 (Answer).
2 & 3 6, 7, 8
10 & 11 25 to 29

The "Cayuga" had the "James Watt" on her starboard side all the time until the collision.

The "James Watt" kept her course.

The collision occurred at a point opposite Chambers street, New York, or a little above it, and about one-third way across the river from the New York shore. The ferry boat was struck on her port quarter, about ten to twenty-five feet from her stern.

By eliminating the facts, which are not controverted, the Court will be saved the labor of wading through the larger part of the voluminous record.

The libellant, appellee relies upon—

First. The Act of Congress of April 29, 1864 (Art. 14 and 18).

13 Stat. at Large, p. 60.

Second. The rules and regulations for the government of pilots, adopted by the Board of Supervising Inspectors under the Act of Congress of August 30, 1852, § 29.

Third. Nautical usages applicable to this case.

The libellant, appellee, claims that the two boats were crossing so as to involve risk of collision, and that the "Cayuga," having the "James Watt" on her own starboard side, should have kept out of the way of the "James Watt."

Art. 14.

That it being the duty of the "Cayuga" to keep out of the way, the co-relative duty was imposed on the "James Watt" to keep her course.

Art. 18.

Articles 16 and 17 have no application to this case, except that they made it incumbent on the "Cayuga" to have slackened her speed or to have stopped and reversed her engine.

The libellant, appellee, claims that the "James Watt" was ahead at all times when there was risk of collision, further down the river than the "Cayuga"; therefore the "James Watt" could not, in the sense of Article 16, have been a steamship approaching another steamship so as to involve risk of collision. The law certainly did not mean to establish two rules for the same thing. If Article 14 is applicable, certainly Article 16 is not. Congress evidently intended Article 16 only to apply to cases not already provided for by the preceding articles. Even if it be conceded that Article 16 is applicable, it does not excuse the "Cayuga." The "James Watt" was certainly ahead at all times when there was risk of collision.

The "James Watt" was on her usual course from Hoboken to Barclay street, N. Y. (S. by E.) She was heading for Cortlandt or Liberty street, so as to get into her slip.

The "Cayuga" was on another course, heading for the Jersey City Ferry, or the Coal Docks (about S. S. W.) Thus the two boats were pursuing their respective courses on lines that crossed. Both knew that their courses were crossing. The "Cayuga" knew that the "James Watt" was a ferry boat running on the Hoboken Ferry, obliquely across the river from Hoboken to Barclay street, N. Y. She therefore knew that she could not pass down, whether in the line of the current or obliquely to the westward, without crossing the track of the ferry boat. The "James Watt" knew, with like certainty, that she could not go to Barclay street, N. Y., without crossing the course of the "Cayuga."

It was perfectly certain that, if each kept its course, one of three things must happen: the "Cayuga" must cross the bow of the "James Watt," the "James Watt" must cross the bow of the "Cayuga," or that must happen, which, in fact, did happen, namely the boats must collide. From the time when they approached within three hundred yards of each other there was obvious risk of collision if neither changed her course. Not such risk that there was instant peril, nor a danger which might not have been avoided, but just the risk which Article 14 contemplated and which brought that rule to bear upon both vessels, making it the duty of the "Cayuga" to keep out of the way of the "James Watt," and not merely permitting, but requiring, the "James Watt" to keep her course.

The "Cayuga" stopped her engine when the "James Watt" was further down the river than the "Cayuga," and the "James Watt" kept on her

course. The "Cayuga's" engine started up again, and the "Cayuga" again continued on her course. Thereupon the "James Watt" blew her whistle, which was not replied to by the "Cayuga." The "James Watt" had then got so far across the line of the "Cayuga's" direction that it was impossible for her to stop, to have ported her helm, or to have done other than she did, to wit, to keep on her course as the best means of avoiding the collision; and the pilot of the "James Watt" had a right to suppose that the "Cayuga" would observe the nautical laws and usages and pass under the "James Watt's" stern.

There was, therefore, no contributing negligence on the part of the "James Watt." There was no nautical fault. The collision was caused solely by the negligence of the "Cayuga" in these points:

1. In having the "James Watt" on her own starboard side, and not keeping out of her way, when both boats were crossing, so as to involve risk of collision.
2. Starting her engine after its first stoppage.
3. Not answering the "James Watt's" whistle, and not observing the rule of the Supervising Inspectors laid down by them. (Fifth situation.)
4. Not having any lookout.
5. Not porting her helm in sufficient time to have avoided a collision.
6. In not reversing her engine when the pilot saw the collision was imminent.

FACTS NOT CONTROVERTED.

1. The "Cayuga" had the "James Watt" on her own starboard side from first to last, all the time.
2. There were two stoppages of the "Cayuga's" engine, one off Hubert street, the other at the instant of the collision.
3. The "James Watt" was making her regular trip from Hoboken to Barclay street, on her usual route, which was well known to the pilot navigating he "Cayuga."-

4. Both boats were going down the Hudson River.

5. The stem of the "Cayuga" struck the "James Watt" a glancing blow on the port quarter, ten to twenty-five feet from the stern.

6. The tide was ebb, running from two to three knots.

7. There was no look-out on the "Cayuga" (unless the pilot Foster, at the wheel, may be said to have been on the look-out).

8. There was no whistle blown on the "Cayuga," or any signal given to indicate what she intended to do, after starting ahead, off Hubert street.

9. There was a whistle blown by the "James Watt"—one short, distinct blast.

10. The engine of the "Cayuga" was not reversed at any time.

11. The "Cayuga's" wheel was not moved or her course altered until the very instant of collision.

The correctness of the diagram, proved by libellant, appellee, is not impeached.

The appellant, in the Courts below, cited "The Narragansett," 1 Olcott. The Court has only to read p. 251 of Judge Betts's opinion to see that there is no application to this case. There is every reason why this diagram should be entitled to great weight.

CONTROVERTED FACTS.

1. How the "Cayuga" was heading, off Hubert street, at the time she started ahead again, after the first stoppage.

2. The relative rate of speed of the two boats.

3. The exact position of each boat at the time of and just prior to the collision.

4. The cause of the collision.

POINTS.

I. This Court, by its decisions, has shown its determination to enforce the simple and safe rules laid down by the 14th and 18th Articles: that a vessel in the position the "Cayuga" held in relation to the "James Watt," should keep out of the way and the "James Watt" should keep her course.

The Corsica, 9 Wallace, 631.
The Columbia, 10 Wallace, 246.

The Courts below have held inflexibly the same rules.

The Cayuga, 7 Blatchford, 385, 390.
The Cayuga, 1 Benedict, 171.
The Hansa, 7 Blatchford, 288.
The Corsica, 6 Blatchford, 190.
The Chesapeake, 5 Blatchford, 411.

13 Stat 60

Mr. JUSTICE NELSON places his decision squarely on this ground, and in his opinion, says:

"This is a simple and plain rule, and must be observed, except under very special and urgent circumstances, in order to avoid the result of fault in case of collision. The correlative duty is also imposed on the other ship to keep her course." * *
"It should be made known that this rule will, on all proper occasions, be steadily enforced, and that, in case of a departure from it, followed by a collision, the *onus* will be on the offending vessel to show a clear and undoubted special case of excuse."

I may say, in the concluding language of this opinion—"No such excuse has been shown in the present instance, and, for this reason, the decree of the Court below should be affirmed."

II. This Court has repeatedly held, in the most emphatic language, that where the findings of fact of the District Court are followed by the concurrent judgment of the Circuit Court, it is entitled to so much weight in this Court, that it will be presumed a correct conclusion was reached, and before the decision will be disturbed, it must manifestly appear that it was wrong.

Page. Fol.

The Quickstep, 9 Wallace. 669.
City of Paris, 9 Wallace, 639.
The Grace Girdler, 7 Wallace, 204 (and cases cited).
The Hypodame, 6 Wallace, 216.
Newell *v.* Norton and Ship, 3 Wallace, 267.
The Ship Potomac, 2 Black, 581.
The Ship Marcellus, 1 Black, 414.
The Water Witch, 1 Black, 494.
The Phila. W. & B. R. R. Co. *v.* Phila. & H de. G. Steam Towboat Co., 23 Howard, 219.
Morewood *v.* Enequist, 23, Howard, 491.
Walsh *v.* Rogers, 13 Howard, 284.

III. The "Cayuga" disregarded the rules and regulations for the government of pilots adopted by the Board of Supervising Inspectors under the Act of Congress of August 30th, 1852, § 29.

Thomas Smith says: "I am familiar with the "rules and regulations for the government of pilots." My position, at the time the Cayuga's engine stopped, was situation Five, with the exception of the Watt being further ahead." 17 44

Wm. W. Betts was the only witness called by the claimant as an expert. This is the whole of his expert testimony:

"Q. Did you know anything about the rules and regulations of pilots? 71 189

A. I have read them over.

Q. Do you know what the fifth position is?

A. I could not name over any of them.

Q. (Showing Pilot Regulations to witness.) There are the different situations. There is "A" going one way, and "B" another. When they are the distance apart that you say the Cayuga and Watt were, what is the duty of "A?" 71 190

A. It is the duty of the boat that is going the fastest to give the other boat the right of way.

Q. Where do you find that?

A. I don't find it there; I never read that over.

Q. You don't know what the duty of "A" is, or "B" in that situation, when they are as near together as the Cayuga and Watt?

A. I don't know as I could give a direct answer; I would know what my duty would be if I were steering the vessel.

Q. (Court.) The question is, what is the duty of the right hand vessel, if they are coming in that position?

A. Well, I don't know as I could give you a correct answer. No."

Page. Fol.

IV. The "Cayuga" violated nautical usages. A careful and thorough analysis of the testimony is made for the purpose of elucidating this point.

OCCUPATION OF WITNESSES.

13 34 Albert De Puget, civil engineer and city surveyor of Hoboken.

15 40 Thomas Smith, "Licensed pilot": "At the time of the collision I was master and pilot of the James Watt." "I have been boating all my life."

24 61 John L. Brown, captain and licensed pilot ten years. Had been following the water thirty years.

27 69 Mott Birdsall, "wheelsman; I have been boating all my days."

31 80 Charles Chamberlain, "Government inspector and guager." Was familiar with the movements of

34 89 these ferry boats. "I have been some 25 years a resident there, and often up in the pilot house myself."

34 90 John Dewald, carman.

35 92 William Ketchum, expressman.

37 97 Harvey H. Brown, collector and real estate agent.

37 99 Isaac H. Alling, carman.

38 101 Wm. Brown, farmer.

39 102 Nathan Heydecker, manufacturer.

39 104 Elijah E. Brown, wheelsman on the "Hoboken"; running six years between Barclay street and Hoboken

Two of the libellant's witnesses only belonged to the Watt; two to another ferry boat; eight were passengers and wholly disinterested. Of the claimant's nine witnesses, eight belonged to the Cayuga, and the other witness was in the same business, captain of a tow boat, whose sympathies were naturally with those similarly employed.

CAYUGA HAD THE WATT ON HER OWN STARBOARD SIDE ALL THE TIME.

10 26 The answer says the James Watt was off the Cayuga's *starboard* stern quarter, and well off towards the Jersey shore, and was inclining towards the New York side of the river; that the James Watt, as she was nearing and overtaking the Cayuga, straightened down the river off to *starboard* of the Cayuga * * * "the stem of the Cayuga striking against the *port* stern quarter of the Watt."

	Page.	Fol.
A. L. De Puget says: "The Cayuga was on our left coming towards us." "The Watt was on the right hand side of the Cayuga," and "both were going down the river." "The Watt did not come up behind the Cayuga and sheer across her bows."	13	35
"I did not see either wheel; she was almost bows on."	15	39
Thomas Smith says: "When about half way, or nearly half way out in the river, I perceived the Cayuga coming on the New York side."	16	41
"The Cayuga had the Watt on her own starboard side when the engine started again."	18	47
"When I first saw the Cayuga, I was off the Cayuga's starboard bow."	21	54
"I did not see the Cayuga until I was off her starboard bow."	23	57
"I was on the Cayuga's starboard bow when I saw her wheel stop." "About 300 yards off, or thereabout."		
John L. Brown says: "I was going from Barclay street to Hoboken. I was on the 'Hoboken,' another boat. I saw the Cayuga coming down the river and the Watt crossing partly across the river, toward her slip. I saw the Cayuga run into her."	24	61
"The Watt was on the starboard side of the Cayuga. The Watt was ahead of the Cayuga. The Cayuga had the Watt on her own starboard side."	24	62
Mott Birdsall says: "The Cayuga was on the port side of us as we were going over." "When I first saw the Cayuga she was off the port quarter."	27 30	70 76
John Dewald says: "I looked across the river and saw the Cayuga." "I saw her on our left side."	34	90
Elijah E. Brown says: "The Watt was on the starboard side of the Cayuga."	40	106
Andrew Foster, pilot of the Cayuga, says: "The first I discovered the Watt was upon our starboard quarter, coming from Hoboken." "More than 300 or 400 yards from us." "Heading in toward us."	44 46 46	116 122 123
George A. Huyck, mate of the Cayuga, says:	50	132

"Q. How were you heading when you first saw the Watt?

A. We were heading down the river as near as I could tell from where I sat.

Q. Where was the Watt?

A. She was off on our starboard quarter—away off to the westward.

Q. How was she headed in reference to your course?

A. She was heading on to us.

Page. Fol.

53 141 Q. Was the Watt on your starboard quarter all the time?
A. All the while.

57 152
54 144
51 135
55 147
54 144 John McCann, the lookout of the Cayuga, who was aft of the wheel talking with the mate, says:

"Q. Where was the Watt when you first saw her?
A. Over on the Hoboken or Jersey side.
Q. How did she bear to you?
A. Come right aft of our wheel, right along straight.
Q. Was she further up the river than you?
A. No, sir; she was coming right on to our quarter all the time.
Q. If she had continued the course on which she was when you first saw her, would she have hit you?
A. Yes, sir."

68 182 Wm. W. Betts, witness for claimant: "The Watt was to the starboard side of the Cayuga all the time."

WATT KEPT HER COURSE.

16 41 Thomas Smith says: "I still kept my course."
26 65 John L. Brown says: "Neither changed her course at any time before the collision happened, after my attention was called."
27 70 Mott Birdsall, the wheelsman, says: "The Watt was keeping on her course."
30 78 "Q. (Court.) Did you shift your wheel at all after you saw her?
A. No sir; we kept our course.
Q. (Court.) You did not shift at all?
A. Enough to keep her straight.
Q. (Court.) Were any signals given to your engineer?
A. No, sir.

There is much further evidence on this point, under the other classifications of the testimony.

PLACE OF COLLISION.

10 28 The answer says "the place of the collision was near the middle of the river, and about off the foot of Robinson street."

	Page.	Fol.
The captain of the "Cayuga" thus fixes the place of collision: "The 'Cayuga' was then in the middle of the river, about off North Moore street, heading down the river."	106	284
A. De Puget says: "We were about one-third of the way across, nearest the New York shore."	15	38
Thomas Smith says: "When opposite Chambers street, or a little below, the Cayuga ran into the James Watt."	16	42
Charles Chamberlain says: "I should think the collision was somewhere in the neighborhood of Chambers street." "About a quarter out in the river."	34	89
Harvey H. Brown says: "When we got about three-quarters or two-thirds of the way across, I saw the Cayuga coming down."	37	98
Charles Chamberlain (deposition in Circuit Court): "I think we were a little above Chamber street."	118	314
Andrew Foster, pilot of the Cayuga, says: "The collision was about abreast of Robinson street." "About in the middle of the river."	45	119
Peter E. Post, pilot on the Cayuga, says: "The collision was about opposite Robinson street."	65	173

Thus it will be seen that there is no substantial disagreement as to the place of collision.

WHERE THE WATT WAS STRUCK.

Thomas Smith says: "The Cayuga ran into the James Watt on her port side stern quarter."	16	42
Mott Birdsall says: "The Cayuga hit us on the port quarter aft."	27	70
Charles Chamberlain says: "The Cayuga struck the Watt pretty well aft." "Not over 25 feet from the stern."	32	83
Wm. Ketchum says: "The Cayuga struck the back part of the Watt."	35	93
Andrew Foster, pilot of the Cayuga says: "Our stem hit the Watt I should judge 10 or 15 feet from her stern."	44	118

BLOWING THE WHISTLE.

N. L. De Puget, says: "The Watt's whistle was blown."	13	35
Thomas Smith, says: "The Cayuga did not blow, the James Watt blew." "I blew one short distinct blast of the whistle."	16 18	42 46
Mott Birdsall, says: "When the Cayuga's engine started ahead again, the Watt blew her whistle."	27	70
Charles Chamberlain, says: "I heard the whistle blow once." "There was no answer from the	31 31	80 82

Page. Fol.

Cayuga." "There was only the whistle from the one boat."

34 91 John Dewald, says: "I heard a whistle."

37 97 Wm. Ketchum, says: "I heard the whistle."

38 99 Isaac H. Alling, says: "I heard the Watt's whistle blow."

60 159 Orlando B. Titus, captain of the Cayuga, says. "There was no whistle blown by our boat."

NAUTICAL USAGE.

18 46 Thomas Smith says: "The meaning of one blast of the whistle signifies, under those circumstances, to pass to the starboard." "That is the usual signal among pilots under such circumstances." "At the time I blew my whistle the Cayuga could have passed under my stern with ease." "It was the duty of the Cayuga to answer my whistle." "It is the

23 59 custom among pilots and nautical men." "When I blow one whistle I mean that I am going to starboard." "It means that I am going to pass to the right."

26 67 John L. Brown says: "We do not always put our helms to port—sometimes we stand our course. But if we are going to alter at all we pass to the right—when we give a signal by one blast of the steam whistle."

COURSE OF THE WATT.

16 42 Thomas Smith says: "I was steering the first

17 43 point east of south." "The Watt continued on the

22 54 same course." "My wheel never started one spoke. I was running with the tide and running straight."

22 55 "My wheel was not put starboard any time after I saw the Cayuga."

24 62 James L. Brown says: "I should judge that the Cayuga was going about sou-sou-west, and the

26 66 Watt about sou-sou-east." "The Watt was heading for about the Jersey City ferry or Cortlandt street on the New York shore."

27 70 Mott Birdsall says: "The Watt was heading somewhere about sou-sou-east."

32 83 Charles Chamberlain says: "When I first saw the Cayuga the ferry-boat was running in a glance line to what I should think would be a little above Cortlandt street, running a little in the direction of Trinity steeple." "The Watt was bound to Barclay

33 85 street." "Since the running out of that long dock there they have diverged somewhat from the manner they used to. They used to run in closer, and now have to give it a little more room." "Running more to the soutward."

	Page.	Fol.
"I saw the Cayuga before I heard the whistle. She was hid from my sight very shortly afterwards, when the disappearance was followed by the blast of the whistle." "She was hid from my sight by the angle of the cabin work. It projects out some distance from the cabin itself." "The Watt was crossing the line of direction of the Cayuga just about the time I saw her."	33	86
	33	87
Wm. Ketchum says: "The Watt was heading down the river going across to New York."	35	93
Harvey H. Brown says: "The Watt kept on the same course." "Heading so as to come in at Barclay street."	37	98
Isaac H. Alling says: "The Watt was heading down the river." "She was pointing about toward Courtland street."	38	100
Elijah E. Brown says: "The Watt was heading sou-soueast." "Pointing somewhere about Courtland street, New York." "Below Barclay street." "In making the Barclay street slip, on an ebb tide we generally strike below it."	40	105
Thomas Smith (deposition in Circuit Court): "The Watt did not slow or stop her engine before the collision." "The Watt was heading for Liberty street, New York." "The Watt's course was not changed." "Not at any time after straightening down the river after leaving the slip at Hoboken." "We do go below, and head up the tide to enter the slip—the Barclay street slip—because there is a long pier on the north side and a short pier on the south side, in which respect it differs from every other ferry slip that I know of in New York."	115	307
	115	308
	116	308
	116	309
Charles Chamberlain (deposition in Circuit Court): "I think the Watt's range would be pretty well with Trinity steeple."	118	314
Andrew Foster, pilot of the Cayuga says: "Well, the Watt kept on a straight course about, pointing down for us about all the time till she got within about two lengths of us."	44	117

COURSE OF THE CAYUGA.

Thomas Smith says: "The Cayuga was heading about south-south-west." "The Cayuga kept the same course."	16	42
	17	43
James L. Brown says: "I should judge the Cayuga was going about sou-sou-west, and the Watt about sou-sou-east." "The Cayuga was heading for about the coal docks, or central ferry—somewhere in that direction on the Jersey shore."	24	62
	26	66
Mott Birdsall says: "The Cayuga was heading	27	70

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nearly sou-west, somewhere in that neighborhood."

35 93 Wm. Ketchum says: "When I first saw the Cayuga, she was heading down the river." "Toward the Watt, I should suppose 300 yards apart, maybe a little more."

37 98 Harvey H. Brown says:

"Q. Did the Cayuga change her course, or keep coming on the same course?"

A. "Seemed to be coming on the same." "Heading right down the stream." "Somewhat toward the Jersey shore."

38 100 Isaac H. Alling says: "The Cayuga was heading down the river."

40 105 Elijah E. Brown says: "The Cayuga did not alter her course till, I should judge, she had struck the Watt." "She was heading, I should judge, about sou-sou-west." "Somewhere about the coal docks, or a little below it on the Jersey shore."

44 117 Andrew Foster, pilot of the Cayuga, says: "I kept my course right along; did not alter at all."

48 127 "Q. Did you move your wheel?"

A. No, sir; I did not alter my course at all."

TIDE EBB, TWO TO THREE KNOTS.

2 6 The libel states that the tide was ebb. This is admitted in the answer.

10 25 & 27

17 44 Thomas Smith says: "It was the last of the ebb."

58 155 Orlando B. Titus, captain of the Cayuga, says: "Well, probably we were going the strength of the tide; if the tide ran three miles we were going that much faster by the land."

There is much further testimony on this point which is not collated, because admitted in the answer.

RATE OF SPEED OF THE WATT.

17 44 Thomas Smith says: "The rate of speed of the Watt was 9 or 10 knots."

25 64 John L. Brown says: "I should judge the Watt was going about 9 knots and the Cayuga about 10 or 11."

30 77 Mott Birdsall says: "I should think the Watt was going about 9 knots." "By the land."

40 106 Elijah E. Brown says: "I should judge the Watt was making about ten knots."

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RATE OF SPEED OF THE CAYUGA.

Thomas Smith says: "The Cayuga was going considerably faster—about 10 or 11 knots." "The Cayuga is a good deal heavier and stronger boat than the Watt." 17 45

John L. Brown says: "I should judge the Watt was going about 9 knots, and the Cayuga about 10 or 11." "The Cayuga is a heavier and larger boat." 25 64

Mott Birdsall says: "The Cayuga was going some faster than we were—I should think some 11 knots." 30 78

Elijah E. Brown says: "I should judge the Cayuga was going may be 12 knots." "I know the Cayuga." "She is a tow-boat on the Hudson river." "I suppose one of the largest." "I believe classed among the fastest, I am not certain." 40 106

Andrew Forster, pilot of "Cayuga," testifies: "About 15 miles with an ebb-tide; that is the usual rate of the Cayuga." 47 124

True he says he was going about six knots, (Tide 2 or 3 miles more.) And he says he had a low head of steam (going against an ebb-tide to tow a heavy barge!) The engineer swears to 20 pounds. Her full rate is 25 or 30, for which she is inspected. 63 168
61 162

WATT WAS A FERRYBOAT, MAKING ITS REGULAR TRIP,

(which fact was known to pilot of Cayuga.)

Andrew Forster, pilot of the Cayuga, says: 47 125

"Q. You are familiar with the course the ferry boats take between Barclay street and Hoboken slip?

A. Well, yes, I am, I suppose, some.

Q. You knew the James Watt when you saw her?

A. Yes, sir.

Q. Knew she was a ferry boat going from Hoboken to Barclay street?

A. I did not know where she was going; I knew she had been running there.

Q. She was pointing in that direction, as you thought?

A. Well, she might have been when she came out of her slip.

Q. You knew that was her business, plying between Hoboken and New York?

A. Yes, sir."

DIAGRAM.

The diagram was made by Albert De Puget, civil engineer and city surveyor of Hoboken, and its correctness is not disputed. 13 34 } 321 }

Page. Fol.

17 43 Thomas Smith, says: "When the Cayuga's engine first stopped, this drawing shows the relative position of the two boats." "This was drawn under my direction."

"The respective positions I have stated were as illustrated on that diagram."

26 67 John L. Brown, says: "That diagram is as correct as can be at the point where I first saw them."

28 71 Mott Birdsall, says: "I should think that that diagram was about a correct representation of the position of the boats at the time the engine stopped."

32 82 Charles Chamberlain says: "I should say from knowledge of the river that that diagram was as near the position the two boats were lying as I could judge when I first saw them."

35 93 Wm. Ketchum, says: "That is just about the position of the boats when I saw them."

LOOKOUT.

18 45 Thos. Smith says: "The wheel-house of the Watt is the best position for looking out." "Like all ferry boats, up clear of everything. Nothing obstructs the view. I had all the four windows down. Our wheel-house was round, with windows
22 56 all round." "I was attending to my business—steering and looking out."

27 70 Mott Birdsall says: "The wheel-house, where I was, was on the upper deck." "There was no ob-
28 71 ject to obstruct the view." "It was the best point
28 72 on the boat for a lookout."

"I was steering and looking out likewise."

115 305 Thomas Smith (deposition in Circuit Court): "I was attending to my duty, steering and watching and looking out for danger." "I was looking towards the Cayuga."

☞ There was no lookout on the Cayuga!

55 147 John McCann says: "When I first saw the Watt I was on the Cayuga's starboard quarter, aft the wheel." "I was sitting there along with the mate." "I could not see forward from where I sat."

57 152 "Q. Was there anybody forward?

A. No, sir, not as I know.

Q. It was your place to be forward?

A. Yes, sir; I worked on the forward deck.

Q. There was nobody there forward looking out when you went there?

A. No, sir, not as I know."

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This case does not come within the principle decided by this Court in the "Farragut," 10th Wallace, 334, and the "Fannie," 11th Wallace, 243. The absence of a look-out on the "Cayuga" clearly contributed to the collision. The rest of the crew of the "Cayuga" were not where they ought to have been. The captain was engaged in looking oer the stern of the "Cayuga" giving directions to his men in a yawl which was towing astern. 108 289

The captain of the "Cayuga" says: "I was looking out to the stern. We had a line out to pick up that boat, and some of the boys were hauling that line in. It was a yawl boat attached to our stern." The rest of the crew of the Cayuga were not at their respective posts of duty. They were sitting talking to each other aft of the large paddle boxes, which obstructed their forward view. 58 156

POSITIONS OF BOTH BOATS.

The answer says, "That in rounding from the pier, at the foot of Hubert street, out into the river, the Cayuga went well out into the middle of the river, and then straightened down." 10 26

A. De Puget says, "The stem of the Cayuga appeared to be coming directly toward the Watt, immediately upon hearing the whistle." 14 37

Thomas Smith says, "This drawing shows about the relative position of the two boats, when the Cayuga's engine first stopped, in my judgment, without reference to the map." 17 43

"The two boats were about three or four hundred yards apart."

"When the Cayuga's engine started ahead again, there was very little difference. They were about the same distance apart. Her headway was still going." 18 45

"When the whistle was blown, the steamers were about two hundred and fifty or three hundred yards apart." 18 46

"The Cayuga was not at any time in front of the Watt." "The Watt did not sheer across her bows." 19 48

"I did not see the Cayuga when she came out of Desbrosses street, but saw her soon after. She had got about one hundred yards from where she was moored, from what I can remember." 19 49

"The Watt was about opposite Desbrosses street, 20 49

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in the middle of the river. The Cayuga was then a little below, swinging around in a little circle."

20 50 "The Cayuga was heading, when I first saw her, down about the central docks, the central ferry; when she stopped, she was heading about south-southwest, further down yet."

20 51 "She was behind me; I was in advance."

21 52 "The Watt was heading for about Cortlandt or Liberty street, New York."

21 53 "The Cayuga was not ahead of the James Watt that day." "At no time after I saw her, and before the collision."

23 57 "I was on the Cayuga's starboard bow when I saw her wheel stop." "About 300 yards off, or thereabout."

25 63 John L. Brown says: "When I first saw these boats, they were going on converging lines, so that, if they had continued on their respective courses, they would have come together." "That is the reason I noticed them." "The Watt was ahead, on the starboard side of the Cayuga."

15 39 A. De Puget, says: "The Cayuga was not ahead of the Watt at any time."

24 62 John L. Brown, says: "The Cayuga was not ahead of the Watt at any time." "I was in a good position for observing any thing that took place."

27 70 Mott Birdsall, says: "When the Cayuga's engine stopped, I should judge she was about 300 yards from the Watt." "The Cayuga was not at any time ahead of us." "She was on our port side." "We did not at any time pass up ahead of the

29 73 Cayuga and sheer across her bow." "At the time I first saw the Cayuga she was about 350 or 400

29 74 yards off." "I have an idea what a distance 350 or 400 yards is; it is a good deal longer on land than on the water, by the eye." "The Watt was going across the direction of the Cayuga at the time I first saw her." "The Cayuga was crossing out from the

29 75 docks at that time." "The Cayuga was not one quarter part of the way to the Jersey shore when I first saw her." "She was heading off shore down from the docks." "Well off to the westward."

31 79 "When I first saw the Cayuga she was coming down the river swinging round."

Q. (Court.) Which side of her did you first see when your eye dropped on her?

A. I don't know, as I could say; I think when I first saw her I could see her port wheel first; I guess about first.

31 81 Charles Chamberlain says: "When I first saw

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the Cayuga, I should judge that the two boats were not over 1,000 or 1,200 feet apart." "She was coming stem on." "I could not say whether I saw one side or the other." "The Watt was going across the starboard bow of the Cayuga." 32 82

William Ketchum says: "When I first saw the Cayuga I should suppose they were 300 yards apart —may be a little more." "The Cayuga was heading down the river." "The Watt was going across to New York, down the river." 35 93

Harvey H. Brown says: "When I first saw the Cayuga, I should judge they were between 300 and 400 yards apart." 37 99

Isaac H. Alling says: "When I first saw the Cayuga, the steamers were about 150 yards apart." "The Watt was crossing the Cayuga's bow." "She was ahead down the river," "about 150 yards apart." 38 100

(Court). Which side of the Cayuga did you see when you heard the whistle and saw the Cayuga? 38 101

A. I did not see no side; I saw the bow.

Q. Coming right stem on?

A. Yes, sir; I thought myself, as she came on, she would split us in two."

Wm. Brown says: 39 102

"Q. Show how they were?

A. This is the James Watt, and this the Cayuga. (Witness illustrated by forming an acute angle, the Cayuga aft.)

Nathan Heydecker says: "When I first saw the Cayuga they were about 60 or 80 yards apart." "I said they will pass very nicely." 39 103

"Q. Just state how they were heading—how they came together?

A All I know about it we were running right straight this way, and that the other boat came just up this way. (Witness illustrated by forming an acute angle with the boats, the Cayuga heading aft.)

Q. (Court.) When you looked out of the window which side of the Cayuga did you see?

A. She came from the New York shore.

Q. (Court.) Which side of the boat did you see?

A. She came right up in front.

Elijah E. Brown says: "When I first saw the Cayuga and Watt I should judge they were about three blocks apart." "We were above the place of collision." "Had passed both boats." "On the port side of the Cayuga and the starboard side of the Watt. Went between the two boats." 40 106 40 107

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41 108 "May be two minutes before the collision." "When I first saw the Cayuga our boat was maybe four or five lengths from the Barclay street slip." "The Cayuga was then coming down the river." "Not heading quite towards us; heading too much to the westward for that." "As near as I can judge, she did not alter her course at all—about sou'-sou'-west." "She was starboard of us." "We passed her about a block from her."

41 109 "We passed across her bow about a block to the westward." "The Watt was then maybe a little below us, on our port side, going down the river.' "When we passed the Cayuga, the Watt was further down the river." "About two blocks, or a block and a half, to the westward of us, but further down

42 110 the river." "Three or four lengths of the Cayuga down the stream." "When the Cayuga passed, the Captain and I were talking about it, and said, 'If the Cayuga did not alter her course she would strike the Watt.'"

42 111 John L. Brown recalled, says:

"Q. You said yesterday you passed between the dock and the Cayuga?

A. I thought we passed between the dock and the Cayuga, but I might have been mistaken in that; it is a long time ago.

Q. Are you still of that opinion?

42 112 A. Since he mentioned it, I think we did go between the two boats; I recollect looking around the stern and seeing her coming, I think, around to the left. (Witness turned his body round to illustrate.)

Thomas Smith (deposition in Circuit Court):

115 306 "Q. In what position were you in reference to the Cayuga at the time you saw this starting of her engine?

A. I was about 300 yards on her starboard quarter—the Cayuga's."

115 307 "Off the starboard bow. On ferry boats we don't say starboard bow or port bow—we say fo-ward starboard quarter, or fo-ward port quarter. We call the other quarter the after starboard quarter and the after port quarter."

116 309 "The Cayuga was crossing the Watt's line of direction."

Charles Chamberlain (deposition in Circuit Court):

117 312 "When I first saw the Cayuga that day, she was, I judge, 300 yards from us, probably more, heading down the river; I should judge from the state of the tide, that she was running tolerably fast. I didn't see her engine stop, but before I lost sight of her around the angle of the cabin, I noticed her engine

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to answer more accurately, because from my position she was coming stem on till I lost sight of her. I was standing about the centre of the bow some ten feet from the extreme end; at the time I noticed the Cayuga's engine slow, she was 200 to 300 yards off, to my best judgment; the boats working together, naturally made the distance less than when I first saw her. I did not see the Cayuga's engine stop at the instant of collision: that was impossible from my position. I did not see the Cayuga's engine stopped at any time. 117 313

Q. Was the Watt lower down the river than the Cayuga from the time you first saw her until the collision?

A. Yes, sir.

Q. At the time you first saw the Cayuga, did she have ample opportunity to avoid the collision?

A. Most certainly, sir, without a doubt."

"In my judgment the whole matter rested on the pilot of the Cayuga to avoid the collision, and he had plenty of time to do it." 118 314

"She was pretty near stem on, making the Watt pretty well in advance of the Cayuga, when I first saw her."

Wm. W. Betts, witness for claimant, says: "I was on one of the Desbrosses street ferry boats, going over from New York to Jersey City." "I saw the Cayuga first." "Shortly after I saw the ferry boat." "They were below me." "The Watt was to the westward of the Cayuga, and shut in by her paddle box." "After I saw the Watt passing down off the Cayuga's starboard side, this collision happened." "It might have been a minute, it might have been half a minute." "They might have been 4 or 500 yards apart." "They must have been more than the length of the Cayuga off, perhaps not over 300 feet" "I was not more than an eighth of a mile above them." "The Cayuga was heading pretty well down the river when I first observed her." "I did not notice that they were changing her course at all." "When I saw the Watt I could not say opposite what street she was." "All that I could say, we were below Desbrosses street." "I suppose it might have been one block, and it might have been three." 67 180 / 68 181 / 68 182 / 68 183 / 69 183 / 69 184 / 69 185 / 69 186

THE TWO STOPPAGES OF THE CAYUGA'S ENGINE.

Thomas Smith says: "The Cayuga's engine stopped suddenly when about opposite Hubert street, or a little below." 16 41

"I saw the Cayuga's wheels stand still and the beam of the engine, before the collision." 21 53

21 54 "From the time the wheel stopped to the collision, I suppose it was little more than a minute—a minute and a quarter to a minute and a half."

22 55-56 This is his cross-examination on this point:

"Q. Did you see the wheel of the Cayuga stop more than once before the collision?
A. No, sir.
Q. Did you see the wheel start ahead again after it had been once stopped?
A. Yes, sir; I saw it revolve.
Q. After she had once stopped?
A. After she stopped that time.
Q. Which way did it revolve?
A. Ahead, down the river.
Q. What were you doing at that time?
A. I was attending to my business, steering and looking out.
Q. You were able to see that the wheel went forward?
A. Yes, sir; that was my business, to watch boats and see what their motion is."

23 58 "Q. Which way were you looking at that time?
A. I was looking forward and looking all around the river.
Q. At that time you were looking all around the river?
A. It was my business to look around the river, from the beam or two points off the beam thereabouts ahead.
Q. After you saw this wheel stop, did you look again to the Cayuga until they came together?
A. Yes, sir. I saw her several times. I looked at her, and looked ahead again.
Q. After you saw the wheel stop, was it as long as a minute before the collision.
A. It was more than a minute from the time the wheel stopped to the collision.
Q. How much more?
A. About a minute and a quarter or a half.
Q. Then the whole time between you first seeing the Cayuga and the collision was about two minutes and a half?
A. Yes, sir. From the time I first saw her stop it was about two minutes and a half, or within that."

24 63 John L. Brown, says: "I did not see the Cayuga's engine stop until she struck; then I saw it stop."

25 65 "I was going up the river towards Hoboken." "I

was further up. I had just passed them so that I had to look a little a stern to see them." 25 65

Mott Birdsall says: "The Cayuga's engine did not stop but a short time." 27 70

John De Wald says: "I saw the Cayuga's walking-beam stop," "and then go on again." "About a minute and a half she stopped." 35 92

Elijah E Brown says: "The Cayuga did not stop her engine till I should judge she had struck the Watt." 40 105

Thomas Smith (deposition in the Circuit Court): "I saw one stoppage of the Cayuga's engine." 113 302

Q. Describe that stoppage? 114 302

A. When I first saw the Cayuga, she was swinging out into the river, as though she had come from Desbrosses street, where she had been laying all the afternoon, and when about opposite Hubert street, about 300 or 400 yards out in the river, heading about for Jersey City—for the Central R. R. docks, she stopped her engine for about half a minute, and then started it ahead again.

Q. Did you notice when you first saw the Cayuga whether her engine was working fast or slow? 114 303

A. I should think it was working rather slow.

Q. Did you see the Cayuga's engine stop at the time of the collision?

A. No, sir.

Q. Just after the collision, did you notice whether or not the Cayuga's engine was stopped?

A. Yes, sir, I did.

Q. Was it stopped?

A. Yes, sir.

Q. About the time of the collision were you in a position to see the Cayuga's engine?

A. No, sir.

Q. Describe, why not.

A. I was in the pilot house, and so far by the Cayuga, that I couldn't see her engine. Instantly after the collision I stopped the engine of my boat, and went aft to see what damage the Watt had received, and then I noticed that the Cayuga's engine had stopped. "I did not see more than one stoppage of the engine of the Cayuga, before the collision." 114 305

"Q. In stating that the engine of the Cayuga was started ahead again after the stoppage and before the collision, on what facts which you saw yourself do you make that statement? 114 305

A. From seeing the engine stop. I saw the beam stop of the Cayuga's engine, and her wheels stopped 115 305

Page. Fol.

—her paddle wheels, and I saw the Cayuga's beam and wheels start ahead again."

The claimant's witnesses also agree that there were two stoppages of the Cayuga's engine. One off Hubert street and the other at the instant of the collision.

60 160 John T. O'Connor, assistant engineer, acting on the Cayuga at the time of the collision, says: "We rounded to after we came out from Desbrosses street; what for I don't know. We stopped for something and started up again, and then we did not stop until we stopped for the ferry boat." "I got a bell to slow and to stop."

"Q. Did you know anything of the collision?

A. Well, when they rang to slow I stepped outside of the engine-room in the gangway.

Q. Which side?

60 161 A. On our port side, and the deck hands ran forward, saying there was going to be a collision with the ferry boat; I looked through the forward gangway and saw the ferry boat come across our bow; just saw the ferry boat. I stepped back in the engine-room, expecting to get some bells very sudden, but I was disappointed; I only got one bell to stop; I got no bells to back; I heard the blow, felt the shock, and passed on.

Q. Did you not get a bell to slow before you got one to stop?

A. Yes, sir.

Q. Then you got two bells?

A. Yes, sir.

Q. But no bell to back?

A. No bell to back.

Q. Had the engine been stopped at any time before that, after coming out from Hubert street?

A. Not after we rounded out—after we had started up after rounding out."

"By the COURT:

61 163 Q. You were in the engine-room when the engine stopped the first time?

A. Yes, sir.

Q. And you got a signal to start?

A. Yes, sir.

Q. And then did you step out into the gangway?

A. After we started up I stepped out to the gangway and saw the Watt.

Q. They rounded down from Hubert street, and

Page. Fol.

after you left Hubert street you got a bell to start your engine?

A. Yes, sir.

Q. What did you do then?

A. I stood at the gangway in the engine-room door.

Q. The engine going ahead?

A. Yes, sir.

Q. Then you said you saw the men running—the deck hands, and you supposed you would get a bell, you stepped right back? 61 164

A. Yes, sir.

Q. Were you in the gangway when the men passed you?

A. Yes, sir.

Q. That was before you got the bell?

A. Yes, sir.

Q. The moment you stepped back, you got the bell? 62 164

A. Yes, sir.

Q. Did you step out there as quick as you started her from Hubert street?

A. I stepped into the engine room and unhooked the engine.

Q. How long was it, from the first time you started her from Hubert street, till you got this blow?

A. Well, sir, I suppose it was probably fifteen minutes.

Q. Then you had been standing fifteen minutes by your door before the men ran forward by you?

A. Yes, sir.

Q. And the engine going ahead?

A. The engine going ahead. 62 165

By Mr. VAN SANTVOORD:.

Q. And between the time she was started, on leaving Hubert street, down to the time you got this bell to stop before the collision, was there any stoppage of the engine?

A. None at all.

By the COURT.

Q. And you estimate that time at fifteen minutes?

A. I suppose about fifteen minutes.

Q. When you stood in the gangway, who stood with you?

A. I stood all alone.

Q. Did you pay any attention to the swinging of the boat?

A. No, sir.

Q. Do you know what way she was heading after you started from Hubert street?

Page. Fol.

A. We were heading down the river for the Battery.

Q. Did you notice the round?

A. I noticed we went around.

Q. How far around had she got when you got the first order?

A. We were round, head down the river; we had got far enough for that.

63 167 Wm. R. Hoffman, engineer, did not see the Watt till after the collision. He heard the bell to slow about half a minute before the collision, and "the one to stop was not over three or
63 169 four seconds." He did not hear the bells ring when he started at Hubert street. He was on the port guard talking with the second pilot. "Aft of
64 170 the wheel house." He says the Cayuga was heading down the river; had got her turn made, and "we had been on our way some time."

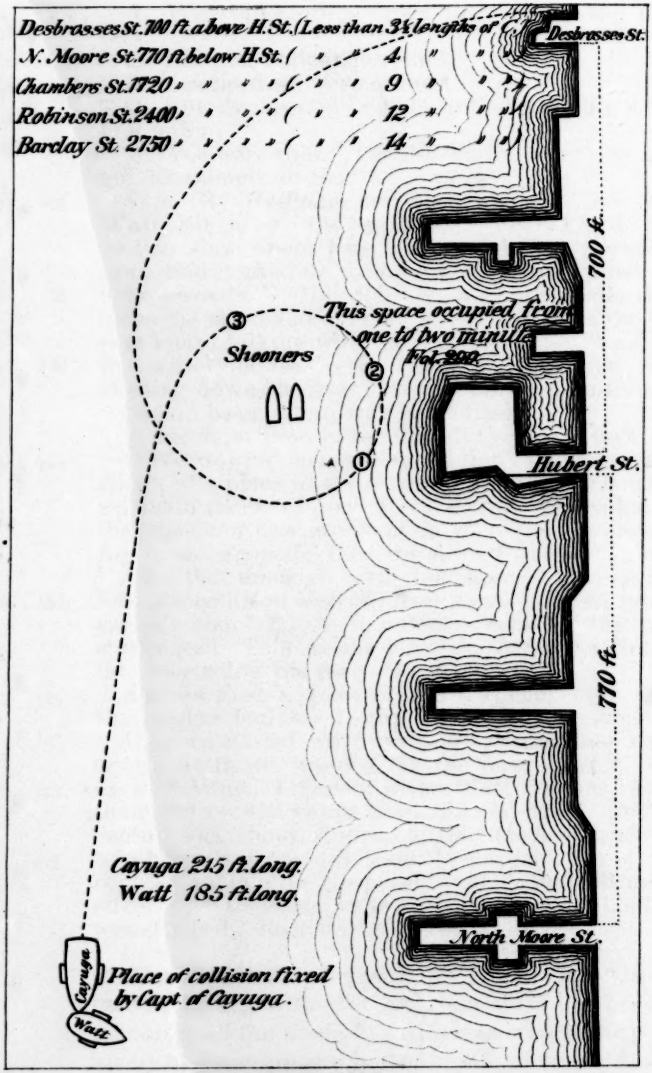
In his deposition in the Circuit Court, he says:

105 281 "We stopped somewhere. I don't know at what street, at a place where we rounded to. We started up again there. I don't recollect how we headed at the time, nor how we went in there; *after rounding to we stopped*; then we started ahead again." "After that the engine was not stopped till just be-
105 282 fore the collision with the ferry boat." "An interval of about fifteen minutes"—between the two stoppages! This would have *drifted* her with the tide way below the place of collision.

45 118 Andrew Foster, pilot of the Cayuga, says that the engine had been stopped at Hubert street." "After we started up from there we did not stop again, until we stopped for the ferry boat." He
46 122 says: "When I first saw the Watt she was more than 300 or 400 yards from the Cayuga." "The engine was about stopped at the time she struck."
101 271 "When we came out from Desbrosses street we rounded off into the river and went down to Hubert street." "In going in to Hubert street our engine was stopped; then started ahead again."

This admits the stoppage off Hubert street, and therein agrees with his own engineer, and corroborates all the libellant's witnesses who swear positively to the stoppage, just after straightening down from Hubert street, after rounding to outside the
101 271 vessels at anchor. He says at the time of the first stoppage the Cayuga headed up the river.

102 275 Peter E. Post, pilot of the Cayuga, makes the



① Engine slowed and stopped, Fol. 287.

② Capt. rung bell to go ahead and then went and told Pilot about going to the East River. Fol. 284 & 287.

③ Jingle bell rung by Pilot to hook her on, Fol. 287.

	Page.	Fol.
same statement and says: "That all the time since he left Hubert street he was standing aft of the paddle box talking with the engineer." He says: "Our engine was stopped at Hubert street; started ahead again; then we were a little outside the docks off Hubert street."	103 102	276 276
John McCann, deck hand on the Cayuga, though called to this point in the Circuit Court, doesn't testify about the stoppage at Hubert street He simply says the Cayuga had not been stopped after leaving Hubert street until the collision	103	278
George A. Huyck, mate of the Cayuga, was sitting on the starboard quarter-rail talking with McCann, the *look out*. Although called to this point in the Circuit Court, he simply says: "I didn't take notice in particular of the bells nor of the engine. I can't testify as to her stopping or starting before the collision."	51 55 104	135 147 279
John T. O'Connor, in his deposition in the Circuit Court, says he did not notice how the Cayuga was headed at the time she was started ahead again from Hubert street. He corrects his testimony in the District Court as to the time between the two stoppages, and says: "It might not have been 10 minutes."	111 111	296 297
Orlando B. Titus, captain of the Cayuga, says that when the Cayuga's engine was stopped, off Hubert street, the Cayuga was heading up the river. On his cross-examination, he says "it might have been northwest, it might have been northeast."	106 107	284 286
As the Cayuga was swinging round, all the while making the circuit round the schooners at anchor off Hubert street, she had got headed down the river before her engine stopped. This agrees with the libellant's testimony, and reconciles that of all the witnesses. He says: "I can't say that the headway of the Cayuga was perfectly stopped at any time between the time of leaving Desbrosses street and the collision." He says: "At Hubert street we laid off the dock, and the engine was stopped. Then I rung the bell to go ahead, and I went and told the pilot we would go around to the East River, and when we came back that we would get the barge." "There were two schooners that lay at anchor off Hubert street, or a little above it. They were in our way, and we had to go around them. In going in to Hubert street we had to go under the stern of those schooners. We went outside of those schooners in coming from Desbrosses street to Hubert, and rounded under their stern and came up inside of them."	107 106	286 284

Page. Fol.

108 289 He says the tide was then ebb, running about two and a half or two miles.

He says:

107 288 "Q. Can you recollect, from the time you left Desbrosses street until the collision, any fixed point or object ahead of the Cayuga?

A. No fixed object, except the Watt under her bow, that I saw; I didn't take notice of anything."

108 289 "Q. What was the meaning of the bell which you rung at Hubert street.

A. It was to go ahead.

Q. To go ahead how?

A. For the engine to go ahead.

Q. If your bell meant to go ahead, why should the pilot ring his jingle bell?

108 290 A. If the pilot did not ring his jingle bell the engineer would work her by hand around to the East River.

Q. Then your signal meant work her ahead by hand?

A. Yes, sir.

Q. How long after your signal to work her ahead by hand was the pilot's signal by the jingle bell?

A. Probably a minute—a minute and a half—two minutes; somewhere along there."

CAUSE OF THE COLLISION.

16 41 Thomas Smith says: "About a quarter to four, I was in the wheel-house. Mr. Birdsall was with me. We had just left Hoboken to go to Barclay street. When about half way, or nearly half way, out in the river, I perceived the Cayuga coming on the New York side. She ran out into the river, and sheered down to the southward. I still kept my course, and after we got on near the Cayuga, the Cayuga's engine stopped suddenly. When about opposite Hubert street, or a little below, I then, of course, seeing her stop her engines, thought I had the right to go ahead, which I did. She only stopped for a moment, when she started ahead again. I then blew one blast of the steam-whistle for her to pass under my stern. She paid no attention to it, and gave no answer that I could see. If she had blown it, I would have seen it, but I neither heard nor saw it, and I was looking at her. I was then heading about southeast or south by east, and the Cayuga was heading about south-southwest. When opposite Chambers street, or a little below, she ran into the James Watt on her port side stern quarter, pushing the stern of the James Watt around, so as to head her up the river."

	Page.	Fol.
"There was no danger of collision by the Watt's continuing her course when the Cayuga first stopped her engine."	18	45
"When the Cayuga's engine started again, after its stoppage, I had no alternative but to go ahead and get out of the way if I could." "If I had altered my course or stopped I think the ferry boat would have been sunk. It would have rendered the collision inevitable and more disastrous than it was."	18	46
	18	47
"The Cayuga at the time her engine stopped could have avoided the collision easily by porting her helm and passing under the stern of the Watt." "I think the collision was caused by negligence on the part of the pilot of the Cayuga in not answering the whistle and porting the helm." "She could have avoided the collision in another way; she could have stopped." "If she had remained stopped when her engine first stopped, she would have avoided the collision."	19	47
	19	48
The Watt is 185 feet long.	19	48
The Cayuga is 215 feet long.	59	157
"The Watt was not slowed or backed any time before the collision."	22	55
"Q. When did you first think there was danger? A. When the Cayuga started ahead. Q. How long before the collision was this one signal by this one blast given? A. About a minute.	24	60
John L. Brown, says: "The collision was caused in my judgment by carelessness on the Cayuga's part?"	24	63
"In not stopping the boat or sheering off." "The Cayuga could have avoided the collision very easily by parting her helm," "or by stopping."	25	63
"I did not see anything about the conduct of the Watt that was faulty or negligent on her part." "She did as I should have done." "In my opinion she did not contribute to the injury at all."	25	64
On his cross-examination he says: "My attention was called to these boats by the directions they were steering. I mentioned to my helmsman that if they did not alter their course there would be a collision, and for that reason I watched them." "When I first saw those boats the collision was imminent." "Not instantly, for they were 3 or 400 yards apart."	25	64
	25	65
Mott Birdsall says: "When I first saw her, we were coming down from Hoboken across the river. I saw the Cayuga coming out in the river, which was astern of us. She came out and swung down	27	69

Page. Fol.

the river some, and then stopped perfectly still, her engine and wheels, and we kept our course ahead, and she started ahead again, right away, or in a short time, and she came on down gaining on us a little; we blew one whistle for her, and there was no answer heard from her; then she came on down, and the consequence was she hit us."

28 71 "Q. What caused the collision?

A. Neglect of the Cayuga, I should think.

Q. Neglect to do what?

A. Neglect in doing her duty.

Q. What was her duty under the circumstances?

A. Stopping or heaving her wheel over to port.

Q. Either would have prevented the collision?

A. Either one, very easily.

Q. Could you see the pilots or the men at the wheel on the Cayuga?

A. Yes, sir.

Q. What were they doing?

A. The pilot stood at the wheel looking out like this, (illustrating leaning out forward of the pilot house.)

Q. Did you see whether they were moving their wheel?

A. No, sir, they were not moving it?"

30 77 "I should think it was two minutes, or two and a half, before the boats came together, from the time I first saw the Cayuga. I can't tell exactly; somewhere in that neighborhood."

31 80 Charles Chamberlain says: "I was on the bow of the James Watt at the time the collision occurred, facing somewhat to the east, in conversation with Mr. De Puget, and I noticed her coming down the river pretty rapidly toward us, and remarked to myself that she would either have to stop or yaw off toward the centre of the river to get clear of us. Almost immediately afterwards I lost sight of her by the angle of the framework in front of the cabin; I heard the whistle blow once, understanding that that was a notice for her to go to the right, and but a short time elapsed when I heard the crash at the stern of the boat."

31 82 "The collision was occasioned, I should say, by an error of judgment on the part of the pilot of the Cayuga not giving way enough for the ferry-boat to pass, or stopping."

33 87 "I consider all the Cayuga had to do was to have slowed up, or worked off a little to the westward to have given the ferry-boat time to get through."

The testimony of John De Wald is given in full,

Page. Fol.

because he accidentally furnished the clue that enables us to reconcile what would otherwise be an apparent conflict of testimony, as will be shown in the course of this argument. 34&35 90, 91 & 92

"Q. What is your occupation?

A. Carman.

Q. You have heard the testimony about this collision--were you in the Watt that day?

A. Yes, sir.

Q. State what you saw, what part of the boat you were, and when you first saw the Cayuga?

A. Well, I was about the middle part of the boat, just about where the wheels are, with my truck; as I got on the boat I went over to talk with a young fellow, and then I jumped on my truck; I think I looked across the river and saw the Cayuga.

Q Could you see from your truck?

A. Yes sir, she was pretty low, and my truck was pretty high, and I had on a pretty good load, and I sat on the top of it.

Q. You could see right over the cabin?

A. Yes, sir

Q. You saw her on your left side?

A. Yes, sir; I noticed this boat coming down; I had a piece of paper in my hand, with my numbers marked down. I kind of nibbled them off, and, as I looked down I heard a whistle, and I looked round and saw this Cayuga coming pretty close, and I said I should not wonder if she would buck us—that is what I said; with that I saw the machinery stopped.

Q. The machinery of what?

A. Of the Cayuga. With that I sat down this way; it was warm and I was sweating; then she started off again and came pretty close to us, and I saw the man in the pilot-house turning his wheel as fast as he could, and she came and bucked us; I had like to have fell off my truck; the horse came very near falling, any way.

Q. The man at the wheel of the Cayuga was turning his wheel very fast?

A. Yes, sir, at the time she struck us.

Q. You saw the walking-beam stop?

A. Yes, sir.

Q. And then go on again?

A. Yes, sir; about a minute and a half she stopped.

Cross-examined by Mr. VAN SANTVOORD;

Q. Do you suppose the man in the pilot-house was moving the wheel that moved the rudder, or the wheel that propelled the boat?

Page. Fol.

A. The wheel that steered the boat he was moving at the time."

36 97 Wm. Ketchum says:

"By the COURT:

"What first attracted your attention to the Cayuga?

A. Well, I think Mr. Chamberlain stood right beside of me, and we were all looking at the Cayuga, and thought there would be a collision."

37 98 Harvey H. Brown says: "I was standing on the forward part of the boat as we were crossing. When we got about three-quarters or two-thirds of the way across I saw the Cayuga coming down. Seemed to be coming directly forward. I remarked to a person standing beside me, 'Why, that boat looks as if she was going to strike us;' and a little while after that she seemed to be continuing right on, and I felt the jar of the collision."

40 105 Elijah E. Brown says: "We were coming out of the slip on the New York side, Barclay street, and the Cayuga was coming down the river on our port side and the Watt on her starboard, as we were going to Hoboken; me and the Captain were talking, and saying that if the Cayuga did not alter her course she would strike the Watt; we were watching them, and the Cayuga did not alter her course or stop her engine till, I should judge, she had struck the Watt."

42 111 "The Cayuga was steering right square head on the Watt—if she had altered her course a point or a point and a half she would have cleared the Watt."

"Q. What was the cause of the collision?

A. The carelessness, I believe.

Q. What would have avoided it?

A. By altering the course of the Cayuga or slowing her engine."

115 306 Thomas Smith (deposition in Circuit Court):

"Q. How long was that starting, which you saw, after the stoppage of the Cayuga's engine which you saw?

A. About half a minute—I should think about that—I couldn't tell.

Q. And how long after this starting which you say you saw, before the collision?

A. I should think about two minutes and a half to three minutes.

Q. Is that not a very large estimate of the difference of time?

A. I should think not."

116 309 "The Cayuga was crossing the Watt's line of direction."

Page. Fol.

"Q. Before crossing the line of the direction of the Cayuga, did you calculate to clear the Cayuga without any collision?

A. I calculated to stop before the Cayuga stopped—but the Cayuga stopping, led me to believe that I could go on ahead without any danger.

Q. Then when the Cayuga stopped, did you calculate that you could clear her without any danger of a collision?

A. Yes, sir. 116 310

Q. Then is it your idea that the collision happened in consequence of the Cayuga's engine being started ahead after being stopped?

A. Yes, sir.

Q. How far do you think you would have cleared the Cayuga's stem if she had not started ahead again?

A. I should say about a hundred yards; I should think I should."

Andrew Foster, pilot of the Cayuga says:

"Q. Did you see the men in the wheel house of the Watt? 46 122

A. I saw one man there.

Q. Did you see him move the wheel?

A. Well, I did not take notice in particular.

Q. You have sworn they hove the wheel to starboard?

A. When he went round our bow, he must have, to give it that sheer; she could not have gone there without.

Q. You did not see him move the wheel? 46 123

A. I did not see him turn the wheel; I judge from the sheer of the boat."

"Q. Did you back before she hit? 45 118

A. No, sir; the engine was not backed."

"I did not reverse the engine." 101 272

"Q. You did not stop your engine until you struck? 46 122

A. It was about stopped at the time she struck."

He was familiar with the course the ferry boats take between Barclay street and Hoboken slip; he knew the James Watt and knew that it was her business; plying between Hoboken and New York. 47 125

"Q. Did you move your wheel? 48 127

A. No, sir; I did not alter my course at all.

Q. Did you move your wheel at the time you struck?

A. No, sir.

Q. Or just before you struck?

A No, sir; I had nothing to move it for."

Page. Fol.

48 128 "Q. (Court.) Why did you not port then and swing as far as you could?

A. It was so short a distance that I could not have got a sheer on to her; it was so quick.

Re-cross:

Q. If the boat was under headway she would mind her helm?

A. Yes, sir; but she was right on top of us.

Q. You struck her 10 feet from the stern, you say?

A. Yes, sir; somewhere about that.

Q. Where would one turn of your wheel, one spoke, have put your stem then—would it not have turned it off 10 feet?

A. No, sir.

Q. How many spokes would it have taken to turn the bow of your boat ten feet?

48 129 A. Two turns of the wheel, I should think.

Q Then every time you are steering the Cayuga, do I understand you to swear, that when you want to turn her 10 feet to the right, you turn your wheel twice around?

67 179 A. Yes, sir. "It will take two turns of the wheel easy enough to sheer her ten feet."

49 129 (By the Court):

Q. Do I understand you to say that you did not roll your wheel at all?

A. I did not alter my course.

Q. Answer my question?

A. I did not roll my wheel.

Q. When did you first suppose that you would strike her?

A. I did not suppose that we would strike her at all."

George H. Huyck, mate of the Cayuga, who

51 135 was aft talking with John McCann, the *look-out!* says:

"Q. Could you see forward?

A. No, sir; the wheel house covers me up so that I can't see.

The cross examination of this witness, the Court is earnestly requested to read, that it may judge the value of the claimant's testimony—(pages 51, 52 and 53.)

The same request is made as to the cross-examination of John McCann the lookout of the Cayuga, pages 55, 56 and 57.

Orlando B. Titus, captain of the Cayuga, says:

58 154 "Q. Did you see the Watt before the collision?

Page. Fol.

A. No, sir.
Q. When did you first see her?
A. She was going across our bow when I first saw her. The bell rung to slow the steamboat, and my attention was called. I looked forward and saw the Watt going across our bow. I heard the bell ring to stop her, and it was not half a second, probably, after the bell rang until they hit."

The Engineer was on the port guard talking with the second pilot, aft of the wheel house. The mate was also aft of the wheel house talking with the look-out. All of them "covered up" by the wheel house so that they could not see forward. There was no one forward. The captain and the rest of the crew were all engaged taking in a hawser from a yawl over the stern. The captain of the Cayuga first saw the Watt through the gangway between his wheel house and engine. He could see no part of the Watt except her paddle box. The Watt was then going right across his bows. The second pilot of the Cayuga also first saw the Watt in the same position looking through the port gangway, between the machinery and the paddle box, and before he could run forward the collision occurred. He could see about half the ferry boat. The lookout also ran forward with him, and had got to the door opening out on the forward deck which came right up against him at the instant of collision.

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59 157 & 158
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All these witnesses on the part of the claimant testify that the Watt sheered across the bows of the Cayuga. The testimony of De Wald, the carman, makes this apparent conflict of testimony perfectly clear. The two boats were going on their converging lines, and the pilot of the Cayuga undoubtedly thought he could clear the stern of the Watt. Finding, too late, his mistake, he did mechanically, by a nautical instinct, the right thing. *He ported his wheel!* That he had not got it hard aport is proved by the testimony of De Wald, that he was moving his wheel at the instant of collision. The captain and wheelsman of the Watt did not see him move his wheel. So that he must have commenced to port his wheel after the pilot house of the Watt had shot by his line of direction. Ten feet further swinging

to the westward, another turn of the Cayuga's wheel, and the collision would not have occurred. The effect upon the Cayuga, of the pilot's porting her wheel, was to swing her bow to the westward. It was while the Cayuga was thus swinging, that the pilot's bell to slow and stop attracted the attention of the crew of the Cayuga to what was going on forward. They looked through the narrow gangway ; they saw the paddle-box of the Watt directly in front of them, and of course it appeared to them that the Watt was sheering across their bows, although the Watt was keeping her course. It was an optical illusion, caused by the movement of their own boat. The eye of the most intelligent observer is often deceived in a similar manner. *Ex. gr.* Who of us that has looked at the spiral screw of a hotel elevator when it was ascending, has not thought that the thread of the screw was moving upward, when, in fact, it was stationary ? And who, when seated in a railroad car in a depot, has not thought that his own car was moving when another car on an adjoining track was moving in the opposite direction, there being no fixed object in the line of his vision ?

The libellant's, appellee's, analysis and explanation of the evidence, reconciles an apparent but not a real conflict of testimony. Upon any other hypothesis the evidence is irreconcilable. No other interpretation, therefore, ought to be accepted, since none can be given without making some of the witnesses contradict the others upon the same state of facts. There is no substantial difference between the witnesses, and that theory should always be received which will harmonize what would otherwise be an irreconcilable conflict of testimony. The weight of disinterested testimony is most certainly with the libellant, appellee.

ON THE SUBJECT OF DAMAGES.

I. The libellant, appellee, proved in the District Court the actual cost of repairs. No new proofs on this point have been taken since, and the question

Page. Fol.

was not discussed in the Circuit Court (see opinion Judge Woodruff, 7 Blatchford, 389).

James Miller, ship carpenter, testifies: "Everything that we put new was to replace what had been all carried away. I put no repairs on the boat except such as were necessary at the time she came into my hands, and none except such as were made necessary by the injury caused by the collision. Everything I put on was necessary to restore the boat in the same condition in which it was before. I put nothing on except what was absolutely indispensable to make the boat as good as she was before. I don't think we did, because we had orders to hurry the job through, because they wanted the boat, and we did so." 72 194

William A. Palmer, Superintendent, testifies:

"No repairs were put on the James Watt other than those made necessary by the collision; no work was done except what was indispensable to put her in her former condition; I hurried the repairs as much as I could, because we wanted to use the boat; I superintended the repairs every day from beginning to completion, and so did the agent, Mr. Shippen, fifteen working days and two Sundays; we use our boats Sundays; more boats that day than others, and carry more passengers that day than week days; the bills shown are the items of cost of repairs." 75 202

"Can't say whether all ferry Companies keep a spare boat; think they do; don't see how they can get along without it." 76 207

Thomas Smith was examined as to the nature and extent of the injury to the Watt. 77 208

James Housman, store and time keeper for the libellants, testified that the amount set down in Exhibit "B" (pages 92 and 93, folios 247 and 248), for labor and materials, was expended for the repair of the Watt, and that these expenditures were all for the repair of the damages to the Watt by reason of the collision. That the day's work is charged for amount actually paid—no profit, and that the charges for materials are all at wholesale cost prices. 77 209

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78 210 Geo. H. Wallace testified that he was time-keeper for libellants in the shipyard, and that the amount set down in Exhibit "A" (pages 91 and 92, folios 245 and 246), for labor and materials, was expended for the repair of the James Watt, and that all this work and this material was furnished the Watt for repairing injuries occasioned by the collision.

78 211 That the labor was charged at 50 cents a day additional for carpenters for the use of tools, yard, &c., from the practice in their yard and the custom in other yards. That he added 10 per cent. to the cost of the materials.

Wm. A. Palmer explains, page 74, folio 201, this addition of ten per cent.

"The way of repairing boats, or doing anything else for the company, is this: All material is bought in large quantities, at wholesale prices, and charged to the store; then when used, charged to each job at a profit—at the usual profit, just so as to make the store pay; generally less than the price charged for same articles by other dealers; ship yard department is separate department from the ferry. All the work done in the ship yard is charged to the ferry, the same as to other individuals, outsiders."

The Commissioner deducted something from these bills.

(Report of Com'r. p. 91, fol. 244.)

80 215, 216 & 217 The claimant, appellant's, evidence was all hypothetical, based on an estimate of a single witness, of what the repairs might have cost, made by a person

81 219 who did not see the collision, or the extent of the injury.

77 209 The libellant, appellant, proved the actual cost of

78 210 repairs by the books and accounts kept by its clerks. This is held by this court to be better evidence than the opinions of experts, taken *ex parte* to under value the work.

The ship Potomac, 2 Black, 584.
Phila. W. & B. R. Co., *v.* Phila. & H. de G. Steam Towboat Co., 23 Howard, 219.
The Schooner Catharine *et al v.* Dickinson, *et al*, 17 Howard, 175.
Williamson *et al. v.* Barrett *et al.*, 13 Howard, 1.0.
Howland *et al. v.* Greenway *et al.*, 22 Howard, 503.

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The charges for the superintendence of the work- 76 207
and 25 cents *per diem* for the use of tools, yard, &c., 78 211, 212
were reasonable and just. 82 223

Mr. Palmer, the Superintendent, says: 77 207

"I crowded the men all I could, and never wasted a dollar."

See opinion of Judge Benedict in this case, 1 Benedict, 171.

Restitutio in integram is the leading maxim as to the measure of damages, in cases of libel in admiralty, for injury to vessels, for collision.

The Baltimore, 8 Wallace 377, (and cases cited.)

II. The only real question for consideration in this case is the demurrage. The principle that the owner of the injured vessel is entitled to recover compensation for her detention while undergoing repairs is now finally settled and generally recognized.

The Baltimore, 8 Wallace, 387 (and cases cited.)
Sturgis *v.* Clough, 1 Wallace, 272.
Williamson *v.* Barrett, 13 Howard, 110.
1 Parson's Maritime Law, 205.
The Cayuga, 2 Benedict, 127.
The Cayuga, 7 Blatchford, 385.
The Santee, 6 Blatchford, 1.
The Isaac Newton, 4 Blatchford, 21.
The R. L. Maybey, 4 Blatchford, 439.

III. The amount of the demurrage allowed was reasonable and just.

EVIDENCE AS TO DEMURRAGE.

The only witness examined on either side when 74 201
the testimony before the Commissioner was closed on the question of the market value of the James Watt, during the time she was undergoing repairs, was Wm. A. Palmer, Superintendent of the ferry. He testified that this value was $75 per day. In his cross examination he stated all the facts upon which 76 205, 206
he based his knowledge. The Commissioner di- 85 228
rected a further hearing on the question of demurrage. Additional testimony on the question of demurrage was taken. Wm. W. Shippen testifies that 85 229
for nearly 21 years he had been general agent and manager of the ferry company and was familiar

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85 230 with ferry boats and their value. He states that $75 a day was a low value for the Watt in and about New York harbor at that time. He gives at length
86 231 the facts upon which he bases his knowledge.

86 232 Charles A. Woolsey testified that he had been for over 22 years superintendent of the Jersey City ferry. He considers $75 a day, exclusive of running expenses, a fair market value for a boat like the James Watt.

87 234 Cyrus P. Smith testified that he had been managing director of the Union Ferry Co., of Brooklyn, for 12 years; had been connected with ferry companies for 25 years; was familiar with ferry
87 235 boats and their value. "He fixes the value of the Watt, at that time, for the boat alone, without officers or crew, at from $75 to $100 per day."
88 236 & 237 He gives at length the facts on which he bases his knowledge, and he states that he knows "that no ferry in New York harbor has more boats on hand for use than their daily business requires, and no company can afford to lose the use of a boat, when they are required by their charter or lease to keep up their line of travel, for less than $75 per day."
88 238 He also testifies that "a ferry boat must be adapted to the ferry slip to be available on any ferry. Consequently, they have a greater value for ferry purposes than other steamboats."

The claimant called three witnesses to testify to the market value of the Watt.

89 238 George L. Garlink, their first witness, says: "I am familiar with the value of steamboats; *not of*
89 240 *ferry boats.*" "I had no knowledge of the James Watt in 1866 only from crossing on her and seeing her."

Q. Do you know her market value per day in June, 1866?

A. She had no market value that I know of.

Q. Then if she had no market value in June, 1866, that you know of, you cannot give her market value per day for that month?

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A. I cannot?"

The claimant's second witness, Henry Smith, says:

"I knew the James Watt in June, 1866. I couldn't say that I knew her value." 90 241

"Q. Did you know anything about ferry boats in June, 1866? 90 242

A. Very little; I don't know that any ferry boats were chartered or sold in June, 1866; so I don't know what was then their per diem market value."

The claimant's third witness, James Loughlin, says:

"I value the James Watt as a steamboat, not as a ferry boat; know her size and general appearance, but never examined her." 91 244

"Q. Do you know the per diem market value of the James Watt in June, 1866?

A. As a ferry boat I can't say."

These witnesses testify that they chartered other steamboats at a much higher rate than $75 a day.

While it is true that there is no marked *rate* for ferry boats, that they are not quoted in the market like stocks or grain, and cannot ordinarily be chartered so as to be said to have a charter-*rate*—it is equally true that they have a market *value*, i.e. a value in the particular waters where they ply. This value is as certainly and readily ascertainable, as the value of a house, a horse, or any other article well known in the market, though not quoted in any price-current list. The libellant's evidence on this point is of the highest character, being that of the superintendents of the three largest ferries in New York, who give at length the data upon which they base their judgment. Their testimony stands wholly uncontradicted. The witnesses who testified on the part of the claimant as to the value of certain other kinds of boats, one and all admitted, on the cross-examination, that they knew nothing about ferry-boats. The market value of the Watt, while undergoing repairs, was proved, and the evidence was not contradicted. The analysis of the testimony shows this, and the reasoning of Judge Benedict, in his

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opinion in the District Court, is very cogent. This case is special and peculiar, and the current of decisions shows that every such case must be governed by its own circumstances.

The Cayuga, 2 Benedict, 127.
The Cayuga, 7 Blatchford, 390.
The Narragansett, 1 Blatch., 211.
The Rhode Island, 2 Blatch., 115.
The Granite State, 3 Wallace, 310.

IV. The principle being conceded, as it must be by the authorities cited, that demurrage should be allowed for the detention of the injured vessel while undergoing repairs, there remains only to be considered whether this case furnishes any exception to the general rule, because the libellant supplied the place of the injured vessel by a spare boat, which,
76 206 & 207 by the special nature of its business, it was compelled to keep on hand for such emergencies.

The reasoning of Judge Woodruff and Judge Benedict on this point in the courts below is so clear and convincing, and it states the libellant's, appellee's, position so tersely and conclusively, that nothing more need be urged in support of it than to read their opinions. If they are right, this Court will adopt their views; if wrong, it will, by its decree, show that their reasons were not sound.

The Cayuga, 2 Benedict, 125.
The Cayuga, 7 Blatchford, 390.

V.—It is respectfully submitted that the judgment of the Circuit Court should be affirmed, with costs, and interest at the rate of seven per centum per annum from the date of the decree until the same is paid.

W. J. A. Fuller

W. J. A. FULLER,

Of Counsel.